Digitized by the Internet Archive
in 2026

https://archive.org/details/principlesofcomp0000alfr_n8o4

MIDDLE TEMPLE LIBRARY
WITHDRAWN STOCK

64

PRINCIPLES OF COMPANY LAW

PRINCIPLES

OF

COMPANY LAW.

BY

ALFRED F. TOPHAM, LL.M.

ONE OF HIS MAJESTY'S COUNSEL.

BENCHER OF LINCOLN'S INN.

SEVENTH EDITION.

LONDON

BUTTERWORTH & CO. (PUBLISHERS), LTD.

BELL YARD, TEMPLE BAR.

SHAW & SONS, LTD., 7 & 8, FETTER LANE, E.C.

SYDNEY:
MELBOURNE: BUTTERWORTH & CO. (AUSTRALIA), LTD.

CALCUTTA:
MADRAS: BUTTERWORTH & CO. (INDIA), LTD.
BOMBAY:

TORONTO: BUTTERWORTH & CO. (PUBLISHERS), LTD.

WELLINGTON (N.Z.): BUTTERWORTH & CO. (AUSTRALIA), LTD.

1929.

PRINTED IN GREAT BRITAIN.

PRINTED IN GREAT BRITAIN BY
WILLIAM CLOWES AND SONS, LIMITED,
LONDON AND BECCLES.

PREFACE TO THE SEVENTH EDITION.

THE Companies Act, 1929, does a great deal more than consolidate the existing law, since it incorporates the Companies Act, 1928, which contained some two hundred alterations or amendments.

Many of these are matters of detail which do not affect the principles of company law, but there are also numerous changes of very great importance in every branch of company law, and an endeavour has been made in this Edition to introduce these in their appropriate context throughout the book.

A comparative table of sections and of the clauses of Table A is set out in the Appendix, so as to enable the reader to trace the provisions with which he has become familiar in the Act of 1908 into the new Act.

The author is much indebted to his friend, Mr. A. R. Taylour of Lincoln's Inn, for his assistance in the preparation of this volume.

A. F. T.

5, NEW SQUARE,
LINCOLN'S INN,
June, 1929.

PREFACE TO THE SIXTH EDITION.

SINCE the appearance of the last edition there has been a large number of decisions relating to company law, some of which are of considerable importance.

It is not possible in a work of this size to deal with every new decision, and accordingly, as in previous editions, those which involve any question of principle have been selected and dealt with, others being referred to in footnotes.

The Law of Property Act, 1922, will not directly affect company law, except in a few matters, all of which have been noted in this Edition.

I am much indebted to my friend, Mr. A. R. Taylour of Lincoln's Inn, for his assistance in the preparation of this volume.

A. F. T.

5, NEW SQUARE,
LINCOLN'S INN,
1924.

TABLE OF CONTENTS.

	PAGE
TABLE OF CASES	XV
CHAPTER I.	
Introduction	1
CHAPTER II.	
The Nature of a Limited Company	5
As contrasted with—	
I. Partnership	5
II. Unincorporated Companies	7
III. Incorporated Companies	8
(a) Under the Act of 1844	8
(b) By Royal Charter	8
(c) By special Act of Parliament (Statutory Companies)	8
IV. Building Societies, etc.	10
V. Other Companies under the Companies Act ...	10
Usual Steps in the Formation of a Company	12
Specimen Form of Memorandum of Association ...	13
CHAPTER III.	
Memorandum of Association	17
Section 1, clause I. The Name	17
Section 2, clause II. The Registered Office	20
Section 3, clause III. The Objects of the Company ...	21
Section 4, clause IV. The Limitation of Liability ...	27
Section 5, clause V. The Capital Clause	27
Section 6. Association Clause and Subscription ...	29
Form of Articles of Association	30

CHAPTER IV.

PAGE
The Articles of Association 46

CHAPTER V.

Formation of a Company 54
Section 1. The Preliminary Contract 54
Section 2. Registration 56
Section 3. The Certificate of Incorporation 58

CHAPTER VI.

The Promoter and the Prospectus 60
Section 1. The Promoter 60
Section 2. The Prospectus 61
Form of Prospectus 80

CHAPTER VII.

Members or Shareholders 84
Section 1. How Persons may become Members ... 84
Section 2. Who may become a Member 86
Section 3. Liability of Members 89
Section 4. Register of Members 94
Section 5. Annual Returns and Lists of Members ... 97

CHAPTER VIII.

Shares 99
Section 1. Allotment 99
Section 2. Certificates 103
Section 3. Transfer 106
Section 4. Transmission 114
Section 5. Share Warrants 115
Section 6. Calls 117
Section 7. Forfeiture 121
Section 8. Surrender 124
Section 9. Lien 125

CHAPTER IX.

PAGE
Capital 129
Section 1. Classes of Capital 129
Section 2. Increase and Alteration of Capital 135
Section 3. Reduction and Diminution of Capital ... 138

CHAPTER X.

Dividends 143

CHAPTER XI.

Borrowing Powers 152

CHAPTER XII.

Debentures 157
Section 1. Debentures and Debenture Stock 157
Section 2. Debentures payable to Registered Holder ... 158
Section 3. Debentures to Bearer 172
Section 4. Registration of Debentures 174
Section 5. Transfer of Debentures 180
Section 6. Issue of Debentures 182
Section 7. Remedies of Debenture-holders 184
Section 8. Receivers 186

CHAPTER XIII.

Underwriting 194

CHAPTER XIV.

Directors 199
Section 1. Position of Directors 199
Section 2. Appointment of Directors 202
Section 3. Quorum 204
Section 4. Qualification 205
Section 5. Remuneration of Directors 209
Section 6. Powers of Directors 211
Section 7. Liability of Directors 214

CHAPTER XV.

PAGE
Meetings and Resolutions 219
Section 1. Meetings 219
Section 2. Resolutions 226
Section 3. Minutes 228

CHAPTER XVI.

Accounts and Auditors 229
Section 1. Accounts 229
Section 2. Auditors 236

CHAPTER XVII.

Private Companies 242

CHAPTER XVIII.

Guarantee Companies 247

CHAPTER XIX.

Winding up by the Court 249
Section 1. When a Company may be Wound up by the Court 249
Section 2. Who may Petition 253
Section 3. What Companies can be Wound up ... 260
Section 4. Procedure on Winding up 260

CHAPTER XX.

Voluntary Winding up 266
Section 1. How and when a Company may be Wound up voluntarily 266
Section 2. Proceedings on Voluntary Winding up ... 268

CHAPTER XXI.

Winding up under Supervision of the Court 275

CHAPTER XXII.

Consequences of Winding up 278

CHAPTER XXIII.

PAGE
Liquidators 293
Section 1. On Winding up by the Court 293
Section 2. On a Voluntary Winding up 310
Section 3. Winding up under Supervision 314

CHAPTER XXIV.

Reconstruction 315

APPENDIX A.—Sections 108 and 110, and Schedules 4 and 5 of the Companies Act, 1929 321

APPENDIX B.—Comparative Tables 332

Test Questions 340

INDEX.

TABLE OF CASES.

A.

PAGE

Adair *v.* Old Bushmills Co., [1908] W. N. 24 131

Adams *v.* Thrift, [1915] 1 Ch. 557; 84 L. J. (CH.) 427; 113 L. T. 569; affirmed, [1915] 2 Ch. 21; 84 L. J. (CH.) 729; 113 L. T. 574, C. A. 64

Addams *v.* Ferick (1859), 26 Beav. 384 121

Addison's Case (1870), 5 Ch. App. 294; 44 L. J. (CH.) 537; 24 W. R. 113. . . . . 87, 113

Addressograph, *Re*, [1909] W. N. 260 184

African Farms, Limited, *In re*, [1906] 1 Ch. 640; 75 L. J. (CH.) 378; 95 L. T. 403; 54 W. R. 490; 13 Manson, 123 . . 261

——— Gold Co., *In re*, [1899] 1 Ch. 414; 68 L. J. (CH.) 215; 80 L. T. 282; 47 W. R. 509; 6 Manson, 84 105

Albert Road, *Re*, [1916] 1 Ch. 289; 85 L. J. (CH.) 187; 114 L. T. 357. 263

Alexander *v.* Automatic Telephone Co., [1900] 2 Ch. 56; 69 L. J. (CH.) 428; 82 L. T. 400; 48 W. R. 546 . . . . 119, 200

Allen *v.* Gold Reefs, Limited, [1899] 2 Ch. 40; 68 L. J. (CH.) 540; 80 L. T. 750; 47 W. R. 558; 6 Manson, 449; varied, [1900] 1 Ch. 656; 69 L. J. (CH.) 266; 82 L. T. 210; 48 W. R. 452; 16 T. L. R. 213, C. A. 51, 115, 128

Alliance Film Corporation *v.* Knoles (1927), 43 T. L. R. 678 . . 281

Allison, *In re*, [1904] 2 K. B. 327; 73 L. J. (K. B.) 763; 91 L. T. 66; 20 T. L. R. 493 311

Amalgamated Syndicate, *In re*, [1897] 2 Ch. 600; 66 L. J. (CH.) 783; 77 L. T. 431; 46 W. R. 75 . . . . . 24, 250

American Pioneer Leather Company, Ltd., *Re*, [1918] 1 Ch. 556; 87 L. J. (CH.) 493; 118 L. T. 695 253

Ammonia Soda Co. *v.* Chamberlain, [1918] 1 Ch. 266; 87 L. J. (CH.) 193; 118 L. T. 48; 34 T. L. R. 60; 62 Sol. Jo. 85, C. A. 146, 147

Andrews *v.* Gas Meter Co., [1897] 1 Ch. 361; 66 L. J. (CH.) 246; 76 L. T. 132; 45 W. R. 321 . . . . . 49, 51, 130

Anglo-Baltic, etc., Bank *v.* Barber & Co., [1924] 2 K. B. 410; 93 L. J. (K. B.) 1135; 132 L. T. 1; [1924] B. & C. R. 224, C. A. . 292

Anglo-French Music Co. *v.* Nicoll, [1921] 1 Ch. 386; 90 L. J. (CH.) 183; 124 L. T. 592 132

PAGE

Anglo-Oriental Carpet Co., *In re*, [1903] 1 Ch. 914; 72 L. J. (CH.) 458; 88 L. T. 391; 51 W. R. 634; 10 Manson, 207 . . . 179
Appleton, *In re*, [1905] 1 Ch. 749; 74 L. J. (CH.) 471; 93 L. T. 8; 55 W. R. 601; 12 Manson, 335 290
Armorduct Co. *v.* General Incandescent Co., [1911] 2 K. B. 143; 80 L. J. (K. B.) 1005; 104 L. T. 805; 18 Manson, 292, C. A.. 283
Army & Navy Society *v.* Craig (1891), 8 T. L. R. 227 . . . 79
Arnot's Case (1887), 36 Ch. D. 702; 57 L. J. (CH.) 195; 57 L. T. 353 86
Artisans' Land & Mortgage Corporation, *Re*, [1904] 1 Ch. 796; 73 L. J. (CH.) 581; 52 W. R. 330; 12 Manson, 98 144
Ashbury Railway Carriage Co. *v.* Riche (1875), L. R. 7 H. L. 653; 44 L. J. (EX.) 185; 33 L. T. 451; 24 W. R. 794 . . 8, 21
Ashurst *v.* Mason (1875), L. R. 20 Eq. 225; 44 L. J. (CH.) 337; 23 W. R. 506 216
Association of Land Financiers, *In re* (1878), 10 Ch. D. 269; 50 L. J. (CH.) 201; 43 L. T. 753; 29 W. R. 277 295
Astley *v.* New Tivoli, [1899] 1 Ch. 151; 79 L. T. 541; 47 W. R. 326; 6 Manson, 64 207
Athenæum Society *v.* Pooley (1858), 3 De G. & J. 294; 28 L. J. (CH.) 119; 5 Jur. (N. S.) 129; 7 W. R. 167 . . . 169, 180
Atkins & Co. *v.* Wardle (1889), 58 L. J. (Q. B.) 377; 61 L. T. 23 . 18
A.-G. *v.* Anglo-Argentine Tramways Co., Ltd., [1909] 1 K. B. 677; 78 L. J. (K. B.) 366; 100 L. T. 609; 25 T. L. R. 339; 53 Sol. Jo. 358; 16 Manson, 118 137
—— *v.* Jameson, [1904] 2 I. R. 644 . . . 47, 108, 245
—— *v.* London County Council, [1902] A. C. 165; 71 L. J. (CH.) 268; 86 L. T. 161; 66 J. P. 340; 50 W. R. 497; 18 T. L. R. 298 23
Australian Estates, etc., Co., Ltd., *In re*, [1910] 1 Ch. 414; 79 L. J. (CH.) 202; 102 L. T. 458; 17 Manson, 63 . . . 130, 138
Automatic Filter Co. *v.* Cunninghame, [1906] 2 Ch. 34; 75 L. J. (CH.) 437; 95 L. T. 651; 22 T. L. R. 378; 13 Manson, 156 . 211
Ayers *v.* South Australian Banking Co. (1871), L. R. 3 P. C. 548; 40 L. J. (P. C.) 22; 19 W. R. 860 22

B.

Baillie *v.* Oriental Telephone and Electric Co., [1915] 1 Ch. 503; 84 L. J. (CH.) 409; 112 L. T. 569; 31 T. L. R. 140, C. A. 208, 222
Baillie's Case, [1898] 1 Ch. 110; 67 L. J. (CH.) 81; 77 L. T. 523; 46 W. R. 187; 4 Manson, 393 . . . . . 95, 103
Balaghat Co., *Re*, [1901] 2 K. B. 665; 49 W. R. 625; 17 T. L. R. 660 94
Bank of Hindustan, *In re* (1871), L. R. 13 Eq. 178; 41 L. J. (CH.) 278 289
Bank of Syria, *In re*, [1901] 1 Ch. 115; 70 L. J. (CH.) 82; 83 L. T. 547; 49 W. R. 150; 8 Manson, 105 204
Barron *v.* Potter, [1914] 1 Ch. 895; 83 L. J. (CH.) 646; 110 L. T. 929; 30 T. L. R. 401; 58 Sol. Jo. 516; 21 Manson, 260 . 203

PAGE
Barrow Haematite Steel Co., *In re*, [1900] 2 Ch. 846 ; 69 L. J. (CH.) 869 ; 83 L. T. 397 140
Bartlett *v.* Mayfair Property Co., [1898] 2 Ch. 28 ; 67 L. J. (CH.) 337 ; 78 L. T. 302 ; 46 W. R. 465 ; 5 Manson, 126 . . 134
Barton *v.* London and North Western Rail. Co. (1889), 24 Q. B. D. 77 ; 59 L. J. (Q. B.) 33 ; 62 L. T. 164 ; 38 W. R. 197 . 86, 113
Bates, *Re*, Mountain *v.* Bates, [1928] Ch. 682 ; 97 L. J. (CH.) 240 ; 139 L. T. 162 151
Bath *v.* Standard Land Co., [1911] 1 Ch. 618 ; 80 L. J. (CH.) 426 ; 104 L. T. 867 ; 27 T. L. R. 393 ; 55 Sol. Jo. 482 ; 18 Manson, 258, C. A. 200
Bechuanaland Exploration Co. *v.* London, etc., Bank, [1898] 2 Q. B. 658 ; 67 L. J. (Q. B.) 986 ; 79 L. T. 270 . . 116, 173
Beeton & Co., *Re*, [1913] 2 Ch. 279 ; 82 L. J. (CH.) 464 ; 108 L. T. 918 ; 57 Sol. Jo. 626 ; 20 Manson, 222 284
Bellerby *v.* Rowland & Marwood's S.S. Co., Ltd., [1902] 2 Ch. 14 ; 71 L. J. (CH.) 541 ; 86 L. T. 671 ; 50 W. R. 566 ; 18 T. L. R. 582 ; 9 Manson, 291, C. A. 124, 125
Betts & Co., Ltd. *v.* Macnaghten, [1910] 1 Ch. 430 ; 79 L. J. (CH.) 207 ; 100 L. T. 922 ; 25 T. L. R. 552 ; 53 Sol. Jo. 521 ; 17 Manson, 71 222
Birkbeck Permanent Building Society, *Re*, [1915] 1 Ch. 91 ; 184 L. J. (CH.) 189 ; 112 L. T. 213 ; 31 T. L. R. 51 ; 59 Sol. Jo. 89 302
Birnam Wood, The, [1907] P. 1 ; 76 L. J. (P.) 1 ; 96 L. T. 140 ; 23 T. L. R. 3 ; 10 Asp. M. L. C. 325, C. A. 243
Bisgood *v.* Henderson's Transvaal Estates, Ltd., [1908] 1 Ch. 743 ; 77 L. J. (CH.) 486 ; 98 L. T. 809 ; 24 T. L. R. 510 ; 52 Sol. Jo. 412 ; 15 Manson, 163, C. A. 25, 166, 319
Bishop *v.* Balkis Consolidated Co. (1890), 25 Q. B. D. 512 ; 59 L. J. (Q. B.) 565 ; 63 L. T. 601 ; 39 W. R. 99 ; 2 Meg. 292 . . 112
Black *v.* Homersham (1878), 4 Ex. D. 24 ; 48 L. J. (EX.) 79 ; 39 L. T. 671 ; 27 W. R. 171 151
Blair Open Hearth Co., Ltd., *Re*, [1914] 1 Ch. 390 ; 83 L. J. (CH.) 313 ; 109 L. T. 839 ; 58 Sol. Jo. 172 ; 21 Manson, 49, C. A. 70, 71
Blaker *v.* Herts and Essex Waterworks Co. (1889), 41 Ch. D. 399 ; 58 L. J. (CH.) 497 ; 60 L. T. 776 ; 37 W. R. 601 ; 1 Meg. 217 184
Bloomenthal *v.* Ford, [1897] A. C. 156 ; 66 L. J. (CH.) 253 ; 76 L. T. 205 ; 45 W. R. 449 . . . . . 105, 113
Bloxwich Iron and Steel Co., *In re*, [1894] W. N. 111 . . . 305
Bodega, *In re*, [1904] 1 Ch. 276 ; 73 L. J. (CH.) 198 ; 89 L. T. 694 ; 52 W. R. 249 ; 48 Sol. Jo. 84 ; 11 Manson, 95 . . . 207
Bolivia Republic Exploration Syndicate, *Re*, [1914] 1 Ch. 139 ; 83 L. J. (CH.) 235 ; 110 L. T. 141 ; 30 T. L. R. 146 ; 58 Sol. Jo. 321 ; 21 Manson, 67 238
Bolognesi's Case (1870), 5 Ch. App. 567 ; 40 L. J. (CH.) 26 ; 18 W. R. 876 311
Bomore Rd. (No. 9), *In re*, [1906] 1 Ch. 359 ; 75 L. J. (CH.) 157 ; 94 L. T. 403 ; 54 W. R. 312 ; 13 Manson, 68 264

PAGE

Bond *v.* Barrow Haematite Steel Co., [1902] 1 Ch. 353 ; 71 L. J. (CH.) 246 ; 89 L. T. 10 ; 50 W. R. 295 ; 18 T. L. R. 249 ; 9 Manson, 69 . . . . . 147, 150

Boord *v.* African, etc., Trading Co., [1898] 1 Ch. 596 ; 67 L. J. (CH.) 451 ; 77 L. T. 553 ; 46 W. R. 150 ; 14 T. L. R. 116 . 94

Booth *v.* New Afrikander, etc., Co., [1903] 1 Ch. 295 ; 72 L. J. (CH.) 125 ; 87 L. T. 509 ; 51 W. R. 193 ; 19 T. L. R. 67 ; 10 Manson, 56 243

Borax Co., *In re*, [1901] 1 Ch. 326 ; 68 L. J. (CH.) 410 ; 80 L. T. 461, 637 166

Borland *v.* Steel Bros., [1901] 1 Ch. 279 ; 70 L. J. (CH.) 51 ; 49 W. R. 120 . . . . . 47, 109

Boschoek Proprietary Co. *v.* Fuke, [1906] 1 Ch. 148 ; 75 L. J. (CH.) 261 ; 94 L. T. 398 ; 54 W. R. 359 ; 22 T. L. R. 196 ; 13 Manson, 100 . . . . . 206, 209

Bowkett *v.* Fuller's United Electric Works, [1923] 1 K. B. 160 ; 92 L. J. (K. B.) 412 ; 128 L. T. 303 ; [1923] B. & C. R. 75, C. A. . 291

Bowman *v.* Secular Society, [1917] A. C. 406 ; 86 L. J. (CH.) 368 ; 117 L. T. 161 ; 33 T. L. R. 376 ; 61 Sol. Jo. 478 . . . 25

Boynton (A.), Ltd., *In re*, [1910] 1 Ch. 519 ; 79 L. J. (CH.) 247 ; 102 L. T. 273 ; 26 T. L. R. 294 ; 54 Sol. Jo. 308 ; 17 Manson, 36. 193

Bradford Banking Co. *v.* Briggs (1886), 12 App. Cas. 29 ; 56 L. J. (CH.) 364 ; 56 L. T. 62 ; 35 W. R. 521 . . . . 127, 128

Brailey *v.* Rhodesia Consolidated, Ltd., [1910] 2 Ch. 95 ; 79 L. J. (CH.) 494 ; 102 L. T. 805 ; 54 Sol. Jo. 475 ; 17 Manson, 222 . 318

Braunstein & Marjolaine, Ltd., *Re*, [1914] W. N. 335 ; 58 Sol. Jo. 755 190

Brazilian Rubber Plantations & Estates, Ltd., *Re*, [1911] 1 Ch. 425 ; 80 L. J. (CH.) 221 ; 103 L. T. 697 ; 27 T. L. R. 109 ; 18 Manson, 177 214

Brighton Hotel Co., *Re* (1868), L. R. 6 Eq. 339 ; 37 L. J. (CH.) 915 ; 18 L. T. 741 257

Brinsmead (T. E.) & Sons, *In re*, [1897] 1 Ch. 45, 406 ; 66 L. J. (CH.) 290 ; 76 L. T. 103 ; 4 Manson, 70 253

Bristol United Breweries, Ltd. *v.* Abbot, [1908] 1 Ch. 279 ; 77 L. J. (CH.) 136 ; 98 L. T. 22 ; 24 T. L. R. 91 ; 15 Manson, 82 . 177

British America Nickel Corporation *v.* O'Brien, [1927] A. C. 369 ; 96 L. J. (P. C.) 57 ; 136 L. T. 615 ; 43 T. L. R. 195 . 171

——— Asbestos Co. *v.* Boyd, [1903] 2 Ch. 439 ; 88 L. T. 763 ; 51 W. R. 667 208

——— Building Stone Co., *In re*, [1908] 2 Ch. 450 ; 77 L. J. (CH.) 752 ; 99 L. T. 608 ; 15 Manson, 349 289

——— Consolidated Oil Co., Ltd., *Re*, [1919] 2 Ch. 81 ; 88 L. J. (CH.) 260 ; 120 L. T. 665 ; 35 T. L. R. 337 ; 63 Sol. Jo. 431 172

——— Equitable Bond, etc., Ltd., *In re*, [1910] 1 Ch. 574 ; 79 L. J. (CH.) 288 ; 102 L. T. 421 ; 17 Manson, 177 259

—— Equitable Co. *v.* Baily, [1906] A. C. 35 ; 75 L. J. (CH.) 73 ; 94 L. T. 1 ; 22 T. L. R. 152 ; 13 Manson, 13 . . . 51

——— Murac Syndicate *v.* Alperton Rubber Co., [1915] 2 Ch. 186 ; 84 L. J. Ch. 665 ; 113 L. T. 373 ; 31 T. L. R. 391 ; 59 Sol. Jo. 494 . . . . . 51, 203

PAGE

British Power, etc., Co., *In re*, [1906] 1 Ch. 497 ; 75 L. J. (CH.) 248 ; 94 L. T. 479 ; 54 W. R. 387 ; 22 T. L. R. 268 ; 13 Manson, 74 ; [1907] 1 Ch. 528 ; 76 L. J. (CH.) 423 ; 97 L. T. 198 ; 14 Manson, 149 ; [1910] 2 Ch. 470 ; 79 L. J. (CH.) 666 ; 103 L. T. 451 ; 54 Sol. Jo. 749 . . . 193

——— Provident, etc., Assurance Society, Stanley's Case (1864), 4 De G. J. & Sm. 407 ; 4 New Rep. 255 ; 33 L. J. (CH.) 535 ; 10 L. T. 674 ; 10 Jur. (N. S.) 713 ; 12 W. R. 894 . 154

——— Vacuum Cleaner Co. *v.* New Vacuum Cleaner Co., [1907] 2 Ch. 312 ; 76 L. J. (CH.) 511 ; 97 L. T. 201 ; 23 T. L. R. 587 ; 14 Manson, 231 ; 24 R. P. C. 641 19

Brookes *v.* Hansen, [1906] 2 Ch. 129 ; 75 L. J. (CH.) 450 ; 94 L. T. 728 ; 54 W. R. 502 ; 22 T. L. R. 475 ; 13 Manson, 172 . . 75

Brown *v.* British Abrasive Wheel Co., [1919] 1 Ch. 290 ; 35 T. L. R. 265 50

——— and Gregory, Ltd., *Re*, [1904] 1 Ch. 627 ; 73 L. J. (CH.) 430 ; 52 W. R. 412 ; 11 Manson, 218 ; on appeal, [1904] 2 Ch. 448 ; 73 L. J. (CH.) 770 ; 11 Manson, 402, C. A. . . . 168, 181

Browne *v.* La Trinidad (1887), 37 Ch. D. 1 ; 57 L. J. (CH.) 292 ; 58 L. T. 137 ; 36 W. R. 289 209

Bulawayo, etc., Co., *In re*, [1907] 2 Ch. 458 ; 76 L. J. (CH.) 673 ; 97 L. T. 752 ; 23 T. L. R. 714 ; 14 Manson, 313 . . . 199

Burland *v.* Earle, [1902] A. C. 83 ; 71 L. J. (P. C.) 1 ; 85 L. T. 553 ; 50 W. R. 241 ; 18 T. L. R. 41 ; 9 Manson, 17 . . . 208

Burns *v.* Siemens Brothers Dynamo Works, [1919] 1 Ch. 225 ; 88 L. J. (CH.) 21 ; 120 L. T. 211 ; 35 T. L. R. 83 ; 63 Sol. Jo. 101 97

Burrows *v.* Matabele Gold Co., [1901] 2 Ch. 23 ; 70 L. J. (CH.) 434 ; 84 L. T. 478 ; 49 W. R. 500 ; 17 T. L. R. 364 . . 72, 243

Burt *v.* Bull, [1895] 1 Q. B. 276 ; 64 L. J. (Q. B.) 232 ; 71 L. T. 810 ; 43 W. R. 180 189

Burton *v.* Bevan, [1908] 2 Ch. 240 ; 77 L. J. (CH.) 591 ; 99 L. T. 342 ; 15 Manson, 272 101

Bury *v.* Famatina Development Corporation, [1909] 1 Ch. 754 ; 78 L. J. (CH.) 508 ; 100 L. T. 703 ; 16 Manson, 138, C. A. ; affirmed, Fatima Development Corporation *v.* Bury, [1910] A. C. 439 ; 79 L. J. (CH.) 597 ; 102 L. T. 866 ; 26 T. L. R. 540 ; 54 Sol. Jo. 616 ; 17 Manson, 242 90

C.

Cairney *v.* Back, [1906] 2 K. B. 746 ; 75 L. J. (K. B.) 1014 ; 96 L. T. 111 ; 22 T. L. R. 776 ; 141 Manson, 58 284

Caldwell *v.* Caldwell & Co., [1916] W. N. 70 142

Calgary & Medicine Hat Co., *In re*, [1908] 2 Ch. 652 ; 78 L. J. (CH.) 97 ; 99 L. T. 706 ; 16 Manson, 36, C. A. 184

Campbell's Case (1873), 9 Ch. App. 1 ; 43 L. J. (CH.) 1 ; 29 L. T. 519 ; 22 W. R. 113 136

PAGE

Canadian Oil Works Corporation, *Re*, Hay's Case (1875), 10 Ch. App. 593; 44 L. J. (CH.) 721; 33 L. T. 466; 24 W. R. 191 . 206
Capital Fire Insurance, *In re* (1882), 21 Ch. D. 209; 52 L. J. (CH.) 20; 47 L. T. 123; 30 W. R. 941 250
Caratal New Mines, Limited, *Re*, [1902] 2 Ch. 498; 71 L. J. (CH.) 883; 87 L. T. 437; 50 W. R. 572; 18 T. L. R. 640 . . 227
Cardiff Workmen's Cottage Co., Limited, *Re*, [1906] 2 Ch. 627; 75 L. J. (CH.) 769; 22 T. L. R. 799 179
Carmichael's Case, [1896] 2 Ch. 643; 65 L. J. (CH.) 902; 75 L. T. 45, C. A. 197
Carshalton Park Estate, Ltd., *In re*, [1908] 2 Ch. 62; 77 L. J. (CH.) 550; 99 L. T. 12; 24 T. L. R. 547; 15 Manson, 228 . . 190
Castello's Case (1869), L. R. 8 Eq. 504 268
Cawley & Co., *In re* (1889), 42 Ch. D. 209; 58 L. J. (CH.) 633; 61 L. T. 601; 37 W. R. 692; 1 Meg. 175 118
Central Klondyke Gold Mining Co., W. N. (1899), 1 . . . 88
Centrifugal Butter Co., *Re*, [1913] 1 Ch. 188; 82 L. J. (CH.) 87; 108 L. T. 24; 57 Sol. Jo. 211; 20 Manson, 34 . . . 262
Chapman *v.* Smethurst, [1909] 1 K. B. 927; 78 L. J. (K. B.) 654; 100 L. T. 465; 25 T. L. R. 383; 53 Sol. Jo. 340; 14 Com. Cas. 94; 16 Manson, 171, C. A. 18
Chepstow Bobbin Mills Co., *In re* (1887), 36 Ch. D. 563; 57 L. J. (CH.) 168; 57 L. T. 752; 36 W. R. 180 277
Chic, Limited, *In re*, [1905] 2 Ch. 345; 74 L. J. (CH.) 597; 93 L. T. 301; 53 W. R. 659; 12 Manson, 342 257
China Steamship Co., *Re* (1869), L. R. 7 Eq. 240; 38 L. J. (CH.) 199; 19 L. T. 667; 17 W. R. 343 180
Christineville Rubber Estates, *Re*, [1911] W. N. 216 . . . 63
City Equitable Fire Insurance Co., *Re*, [1925] Ch. 407; 94 L. J. (CH.) 445; 133 L. T. 520; [1925] B. & C. R. 109 . 214, 240
City of London Insurance Co., Ltd., *Re* (1925), 41 T. L. R. 521 . 215
Clandown Colliery Co., *Re*, [1915] 1 Ch. 369; 84 L. J. (CH.) 420; 112 L. T. 1060; 59 Sol. Jo. 350 257
Claridge's Patent Asphalte Co., *Re*, [1921] 1 Ch. 543; 90 L. J. (CH.) 273; 125 L. T. 255; 37 T. L. R. 465; 65 Sol. Jo. 455 215
Clark *v.* Balm, Hill & Co., [1908] 1 K. B. 667; 77 L. J. (K. B.) 369; 15 Manson, 42 174
Clayton Engineering Co., *In re*, [1904] W. N. 28; 20 L. T. 283 . 186
Cleary *v.* Brazil Railway, [1915] W. N. 178; 113 L. T. 96 . . 187
Clemens Aluminium, Ltd., *Re* (1924), 94 L. J. (K. B.) 487; 132 L. T. 448; 41 T. L. R. 138; [1925] B. & C. R. 61 . . 284
Clinch *v.* Financial Corporation (1869), 4 Ch. App. 117; 38 L. J. (CH.) 1; 19 L. T. 334; 17 W. R. 84 319
Coalport China Co., *In re*, [1895] 2 Ch. 404; 64 L. J. (CH.) 710; 73 L. T. 46; 44 W. R. 38; 2 Manson, 532; 12 R. 462 . . 109
Coasters, Ltd., *Re*, [1911] 1 Ch. 86; 80 L. J. (CH.) 89; 103 L. T. 632; 18 Manson, 133 105
Collaroy Co. *v.* Giffard, [1928] Ch. 144; 97 L. J. (CH.) 69; 138 L. T. 321; [1927] B. & C. R. 217 132

PAGE
Colmer, Limited, *In re*, [1897] 1 Ch. 524; 66 L. J. (CH.) 326; 76 L. T. 323; 45 W. R. 343 140
Colonial Gold Reef, Ltd. *v.* Free State Rand, Ltd., [1914] 1 Ch. 382; 83 L. J. (CH.) 303; 110 L. T. 63; 30 T. L. R. 88; 58 Sol. Jo. 173; 29 Manson, 42 225
Columbian Fireproofing Co., *In re*, [1910] 1 Ch. 758; 79 L. J. (CH.) 392; affirmed, [1910] 2 Ch. 120; 79 L. J. (CH.) 583; 102 L. T. 835; 17 Manson, 237, C. A. 288
Commercial Bank of India, *In re* (1868), L. R. 6 Eq. 517; 16 W. R. 1104 260
Companies Guardian Society, *Re*, Wallscourt's (Lord) Case, [1899] W. N. 258; 7 Manson, 235 125
Company, A, *Re*, [1894] 2 Ch. 349; 63 L. J. (CH.) 565; 71 L. T. 15; 42 W. R. 585; 1 Manson, 151; 8 R. 235 258
Connolly Bros., Ltd., *Re* (No. 2), [1912] 2 Ch. 25; 81 L. J. (CH.) 517; 106 L. T. 738; 19 Manson, 259, C. A. 168
Consolidated South Rand Mines Deep, Ltd., *In re*, [1909] 1 Ch. 491; 78 L. J. (CH.) 326; 100 L. T. 319; 16 Manson, 81; [1909] W. N. 66, C. A. 253, 263, 317
Consort Deep Level Gold Mines, Ltd., *Re*, *Ex parte* Stark, [1897] 1 Ch. 575; 66 L. J. (CH.) 297; 76 L. T. 300; 45 W. R. 420; 13 T. L. R. 265, C. A. 197
Continental Tyre Co. *v.* Daimler Co., Limited, [1915] 1 K. B. 893; 84 L. J. (K. B.) 926; 112 L. T. 324; 31 T. L. R. 159; 59 Sol. Jo. 232; 20 Com. Cas. 208, C. A.; reversed, Daimler Co., Ltd. *v.* Continental Tyre and Rubber Co., [1916] 2 A. C. 307; 85 L. J. (K. B.) 1333; 114 L. T. 1049; 32 T. L. R. 624; 60 Sol. Jo. 602; 22 Com. Cas. 32 20
Cook *v.* Deeks, [1916] 1 A. C. 554; 85 L. J. (P. C.) 161; 114 L. T. 636 213
Cooper *v.* Griffin, [1892] 1 Q. B. 740; 61 L. J. (Q. B.) 563; 66 L. T. 660; 40 W. R. 420, C. A. 206
Cope (Benjamin) & Sons, Ltd., *Re*, [1914] 1 Ch. 800; 83 L. J. (CH.) 699; 110 L. T. 905 168
Cotman *v.* Brougham, [1918] A. C. 514; 87 L. J. (CH.) 379; 119 L. T. 162; 34 T. L. R. 410; 62 Sol. Jo. 534 . . 24, 25
Cotton *v.* Imperial and Foreign Agency and Investment Corporation, [1892] 3 Ch. 454; 61 L. J. (CH.) 684; 67 L. T. 342. . 25
County Hotel and Wine Co. *v.* London and North Western Rail. Co., [1918] 2 K. B. 251; 87 L. J. (K. B.) 849; 119 L. T. 38; 34 T. L. R. 393 22
Cox-Moore *v.* Peruvian Corporation, Ltd., [1908] 1 Ch. 604; 77 L. J. (CH.) 387; 98 L. T. 611; 15 Manson, 191 . . 166, 168
Cree *v.* Somervail (1879), 4 App. Cas. 648; 41 L. T. 353; 28 W. R. 34 125
Crichton's Oil Co., *Re*, [1902] 2 Ch. 86; 71 L. J. (CH.) 531; 86 L. T. 787; 18 T. L. R. 556, C. A. 133
Crigglestone Coal Co., *In re*, [1906] 1 Ch. 523; 75 L. J. (CH.) 307; 94 L. T. 471; 54 W. R. 298; 13 Manson, 181; [1906] 2 Ch. 327; 75 L. J. (CH.) 662; 95 L. T. 510; 22 T. L. R. 585; 13 Manson, 233 . . . . . 184, 257

PAGE

Crompton & Co., Ltd., *Re*, [1914] 1 Ch. 954; 83 L. J. (CH.) 666; 110 L. T. 759; 58 Sol. Jo. 433 190

Croskey *v.* Bank of Wales (1863), 4 Giff. 314; 8 L. T. 301; 9 Jur. (N. S.) 595 117

Crouch *v.* Credit Foncier (1873), L. R. 8 Q. B. 374; 42 L. J. (Q. B.) 183; 29 L. T. 259; 21 W. R. 946 173

Crown Bank, *In re* (1890), 44 Ch. D. 634; 59 L. J. (CH.) 739; 62 L. T. 823; 38 W. R. 666 24

Cuban Land & Development Co. (1911), Ltd., *Re*, [1921] 2 Ch. 147; 90 L. J. (CH.) 440; 125 L. T. 792; 65 Sol. Jo. 680; [1921] B. & C. R. 168 169

Cuff *v.* London and County Land Co., [1912] 1 Ch. 440; 81 L. J. (CH.) 426; 106 L. T. 285; 28 T. L. R. 218; 19 Manson, 166, C. A. 237

Cunard Steamship Co. *v.* Hopwood, [1908] 2 Ch. 564; 77 L. J. (CH.) 785; 99 L. T. 549; 24 T. L. R. 865; 11 Asp. M. L. C. 147; 15 Manson, 353 177

Cyclists' Touring Club, *In re*, [1907] 1 Ch. 269; 76 L. J. (CH.) 172; 96 L. T. 780; 23 T. L. R. 220; 14 Manson, 52 26

——————— *v.* Hopkinson, [1910] 1 Ch. 179; 79 L. J. (CH.) 82; 101 L. T. 848; 26 T. L. R. 117; 54 Sol. Jo 134; 17 Manson, 10 23

D.

Dafen Tinplate Co. *v.* Llanelly Steel Co., [1920] 2 Ch. 124; 89 L. J. (CH.) 346; 123 L. T. 225; 36 T. L. R. 428; 64 Sol. Jo. 446 . 50

David & Johnson, *In re*, [1914] 2 K. B. 694; 83 L. J. (K. B.) 1173; 110 L. T. 942; 30 T. L. R. 366; 58 Sol. Jo. 340 . . . 287

Davies *v.* Gas Light & Coke Company, [1909] 1 Ch. 248; 78 L. J. (CH.) 160; 99 L. T. 827; 25 T. L. R. 135; 16 Manson, 56; affirmed, [1909] 1 Ch. 708; 78 L. J. (CH.) 445; 100 L. T. 553; 25 T. L. R. 428; 53 Sol. Jo. 399; 16 Manson, 147, C. A. . 94

Davy & Co. *v.* Williamson & Sons, [1898] 2 Q. B. 194; 67 L. J. (Q. B.) 699; 78 L. T. 392; 47 W. R. 571 167

Dawson *v.* African Consolidated Co., [1898] 1 Ch. 6; 67 L. J. (CH.) 47; 77 L. T. 755; 46 W. R. 132; 4 Manson, 372 . . . 118

De Beers Mines *v.* British South Africa Co., [1912] A. C. 52; 81 L. J. (CH.) 137; 105 L. T. 683; 28 T. L. R. 114; 56 Sol. Jo. 175 169

Defries & Co., Limited, *In re*, [1904] 1 Ch. 37; 73 L. J. (CH.) 1; 52 W. R. 253 178

De La Rue (Thomas) & Co., Ltd., *Re*, [1911] 2 Ch. 361; 81 L. J. (CH.) 59; 105 L. T. 542; 55 Sol. Jo. 715; 19 Manson, 71 . 140

Demerara Rubber Co., *In re*, [1913] 1 Ch. 331; 108 L. T. 318; 20 Manson, 148 317

Denham & Co., *In re* (1883), 25 Ch. D. 752; 50 L. T. 523; 32 W. R. 487 216

PAGE
Denver Hotel Co., *Re*, [1893] 1 Ch. 495; 62 L. J. (CH.) 450; 68 L. T. 8; 41 W. R. 339; 2 R. 330, C. A. 125
De Pass' Case (1859), 4 De G. & J. 544; 28 L. J. (CH.) 769; 5 Jur. (N. S.) 1191; 7 W. R. 681 108
Derry *v.* Peek (1889), 14 App. Cas. 337; 58 L. J. (CH.) 864; 61 L. T. 265; 54 J. P. 148; 38 W. R. 33; 1 Meg. 292 . . 63
Devala Provident Gold Co., *Re* (1883), 22 Ch. D. 593; 52 L. J. (CH.) 434; 48 L. T. 259; 31 W. R. 425 86
Deverges *v.* Sandeman, [1902] 1 Ch. 576; 71 L. J. (CH.) 328; 86 L. T. 269; 50 W. R. 404; 18 T. L. R. 375, C. A. . . . 110
Dexine Patent Packing Co., *In re*, [1903] W. N. 82; 88 L. T. 791 . 139
Dey *v.* Pullinger Engineering Co., [1921] 1 K. B. 77; 89 L. J. (K. B) 1229; 124 L. T. 534; 37 T. L. R. 10 53
Deyes *v.* Wood, [1911] 1 K. B. 806; 80 L. J. (K. B.) 553; 104 L. T. 404; 18 Manson, 229, C. A. 189
Diamond *v.* English Sewing Cotton Co., [1922] W. N. 237; 57 L. Jo. 311; 154 L. T. Jo. 79, C. A. 210
Dickson's Case (1879), 12 Ch. D. 298; 48 L. J. (CH.) 766; 41 L. T. 184; 27 W. R. 880 280
Discoverers Finance Corporation, Ltd., *Re*, Lindlar's Case, [1910] 1 Ch. 312; 79 L. J. (CH.) 193; 102 L. T. 150; 26 T. L. R. 291; 54 Sol. Jo. 287; 17 Manson, 46, C. A.; affirming, [1910] 1 Ch. 207; 101 L. T. 672; 26 T. L. R. 98 108
Dixon *v.* Kennaway, [1900] 1 Ch. 833; 69 L. J. (CH.) 501; 82 L. T. 527; 7 Manson, 446 104
Djambi Rubber Estates, Ltd., *Re*, [1912] W. N. 192; 28 T. L. R. 495; 56 Sol. Jo. 704; affirmed, 107 L. T. 631; 29 T. L. R. 28; 57 Sol. Jo. 43, C. A. 86
Dover Coalfield Extension, Ltd., *In re*, [1908] 1 Ch. 65; 77 L. J. (CH.) 94; 98 L. T. 31; 24 T. L. R. 52; 15 Manson, 51, C. A. 206, 210
Dovey *v.* Cory. *See* National Bank of Wales, *Re*.
Dublin City Distillery, Ltd. *v.* Doherty, [1914] A. C. 823; 83 L. J. (P. C.) 265; 111 L. T. 81; 58 Sol. Jo. 413; [1914] 1 I. R. 389; 48 I. L. T. 115 . . . . . 175, 178
Duck *v.* Tower Galvanizing Co., Limited, [1901] 2 K. B. 314; 70 L. J. (K. B.) 625; 84 L. T. 847 53
Duncan (W. W.) & Co., *In re*, [1905] 1 Ch. 307; 74 L. J. (CH.) 188; 92 L. T. 108; 53 W. R. 299; 12 Manson, 38 . . . 286
Dunderland Iron Ore Co., Ltd., *Re*, [1909] 1 Ch. 446; 78 L. J. (CH.) 237; 100 L. T. 224; 16 Manson, 67 258
Dunlop *v.* Higgins (1848), 1 H. L. Cas. 381; 12 Jur. 295 . . 102
Dupont, *In re*, [1906] W. N. 14 184

E.

East *v.* Bennett Bros., Ltd., [1911] 1 Ch. 163; 80 L. J. (CH.) 123; 103 L. T. 826; 27 T. L. R. 103; 55 Sol. Jo. 92; 18 Manson, 145 219, 222
Edelstein *v.* Schuler, [1902] 2 K. B. 144; 71 L. J. (K. B.) 572; 87 L. T. 204; 40 W. R. 493; 18 T. L. R. 597; 7 Com. Cas. 172 . 174

PAGE
Edgington *v.* Fitzmaurice (1885), 29 Ch. D. 459; 55 L. J. (CH.) 650; 53 L. T. 369; 50 J. P. 52; 33 W. R. 911 . . . 62
Edwards *v.* Standard Rolling Stock Syndicate, [1893] 1 Ch. 574; 62 L. J. (CH.) 605; 68 L. T. 194; 41 W. R. 343; 3 R. 226 . 190
Ehrmann Bros., Ltd., *In re*, [1906] 2 Ch. 697; 75 L. J. (CH.) 817; 95 L. T. 664; 54 W. R. 555; 22 T. L. R. 734; 13 Manson, 256 179
Eley *v.* Positive, etc., Co. (1876), 1 Ex. D. 88; 45 L. J. (EX.) 451; 34 L. T. 190; 24 W. R. 338, C. A. 47
Elias *v.* Continental Co., [1897] 1 Ch. 511; 66 L. J. (CH.) 273; 76 L. T. 229; 45 W. R. 313 185
Engel *v.* South Metropolitan Co., [1892] 1 Ch. 442; 61 L. J. (CH.) 369; 66 L. T. 155; 40 W. R. 282 155
English and Colonial Produce Co., *In re*, [1906] 2 Ch. 435; 75 L. J. (CH.) 881; 95 L. T. 580; 22 T. L. R. 669; 13 Manson, 337, C. A. 54
English, Scottish and Australian Bank, *In re*, [1893] 3 Ch. 385; 62 L. J. (CH.) 825; 69 L. T. 268; 42 W. R. 4; 2 R. 574, C. A. . 225
Entwistle *v.* Davis (1867), L. R. 4 Eq. 272; 36 L. J. (CH.) 825; 31 J. P. 708 103
Ernest *v.* Loma Co., [1897] 1 Ch. 1; 66 L. J. (CH.) 17; 75 L. T. 317; 45 W. R. 86, C. A. 224
Esberger *v.* Capital & Counties Bank, [1913] 2 Ch. 366; 82 L. J. (CH.) 576; 109 L. T. 140 177
Esparto Trading Co., *In re* (1879), 12 Ch. D. 191; 48 L. J. (CH.) 573; 28 W. R. 446 122
Essex and Suffolk Equitable Insurance Society, Ltd., *In re*, [1909] W. N. 102 26
Etheridge *v.* Central Uruguay Ry., [1913] 1 Ch. 425; 82 L. J. (CH.) 333; 108 L. T. 362; 29 T. L. R. 328; 57 Sol. Jo. 341; 20 Manson, 172 319
Evans *v.* Brunner, Mond & Co., [1921] 1 Ch. 359; 90 L. J. (CH.) 294; 124 L. T. 469 22
——— *v.* Rival Granite Quarries, Ltd., [1910] 2 K. B. 979; 79 L. J. (K. B.) 970; 26 T. L. R. 509; 54 Sol. Jo. 580, C. A. . . 166
Everitt *v.* Automatic Co., [1892] 3 Ch. 506; 62 L. J. (CH.) 241; 67 L. T. 349; 3 R. 34 126
Ewing *v.* Buttercup Margarine Co., [1917] 2 Ch. 1; 86 L. J. (CH.) 441; 117 L. T. 67; 33 T. L. R. 321; 61 Sol. Jo. 443; 34 R. P. C. 232, C. A. 19
Exmouth Docks Co., *Re* (1873), L. R. 17 Eq. 181; 43 L. J. (CH.) 110; 29 L. T. 563; 22 W. R. 104 258
Express Engineering Works, Ltd., *Re*, [1920] 1 Ch. 466; 89 L. J. (CH.) 379; 122 L. T. 790; 36 T. L. R. 275, C. A. . 22, 228

F.

Factage Parisien, explained (1867), 2 Ch. App. 746 . . . 252
Finance & Issue, Ltd. *v.* Canadian Produce Co., Ltd., [1905] 1 Ch. 37; 73 L. J. (CH.) 751; 91 L. T. 685; 53 W. R. 170; 20 T. L. R. 807; 11 Manson, 412 101

PAGE
Fireproof Doors, Ltd., *Re*, [1916] 2 Ch. 142 ; 85 L. J. (CH.) 444 ; 114 L. T. 994 ; 60 Sol. Jo. 513 . . 162, 178, 183, 213, 222
First Garden City *v.* Bonham-Carter, [1928] Ch. 53 ; 97 L. J. (CH.) 52 ; 138 L. T. 222 133
First National Reinsurance Co. *v.* Greenfield, [1921] 2 K. B. 260 ; 90 L. J. (K. B.) 617 ; 125 L. T. 171 ; 37 T. L. R. 235 . . . 121
Fleetwood & District Electric, etc., Syndicate, *Re*, [1915] 1 Ch. 486 ; 84 L. J. (CH.) 374 ; 112 L. T. 1127 ; 31 T. L. R. 221 ; 59 Sol. Jo. 383 ; [1915] H. B. R. 70 285
Food Controller *v.* Cork, [1923] A. C. 647 ; 92 L. J. (CH.) 587 ; 130 L. T. 1 ; 39 T. L. R. 699 ; 67 Sol. Jo. 788 284
Forest of Dean Coal Mining Co., *In re* (1878), 10 Ch. D. 450 ; 40 L. T. 287 ; 27 W. R. 594 201
Fortune Copper Mining Co., *In re* (1870), L. R. 10 Eq. 390 ; 40 L. J. (CH.) 43 ; 22 L. T. 650 21
Foss *v.* Harbottle (1843), 2 Hare, 461 208
Foss, Bilbrough & Co., *Re*, [1912] 2 Ch. 161 ; 81 L. J. (CH.) 558 ; 106 L. T. 835 ; 56 Sol. Jo. 574 286
Foster *v.* Coles, [1906] W. N. 107 ; 22 T. L. R. 555 . . . 131
——— *v.* London, Chatham and Dover Rail. Co., [1895] 1 Q. B. 711 ; 64 L. J. (Q. B.) 65 ; 71 L. T. 855 ; 43 W. R. 116 ; 14 R. 27, C. A. 22
——— *v.* New Trinidad, etc., Co., Ltd., [1901] 1 Ch. 208 ; 70 L. J. (CH.) 123 ; 49 W. R. 119 ; 17 T. L. R. 89 ; 8 Manson, 47 . 149
Foucar & Co., *Re*, [1913] W. N. 83 ; 29 T. L. R. 350 . . . 137
Fowler *v.* Broad's Night Light Co., [1893] 1 Ch. 724 ; 62 L. J. (CH.) 373 ; 68 L. T. 576 ; 41 W. R. 247 ; 3 R. 295 . . . 298
Fraser & Chalmers, Ltd., *Re*, [1919] 2 Ch. 114 ; 88 L. J. (CH.) 343 ; 121 L. T. 232 ; 35 T. L. R. 484 ; 63 Sol. Jo. 590 ; [1918–1919] B. & C. R. 186 132
Fry *v.* Smellie, [1912] 3 K. B. 282 ; 81 L. J. (K. B.) 1003 ; 106 L. T. 404, C. A. 110
Fuller *v.* Glyn & Co., [1913] 2 K. B. 168 ; 83 L. J. (K. B.) 764 ; 110 L. T. 318 ; 80 T. L. R. 162 ; 58 Sol. Jo. 235 ; 19 Com. Cas. 186 110

G.

G. E. B. (a debtor), *In re*, [1903] 2 K. B. 340 ; 72 L. J. (K. B.) 712 ; 89 L. T. 245 ; 51 W. R. 675 ; 10 Manson, 243, C. A. . . 281
Galloway *v.* Hallé Concerts, [1915] 2 Ch. 233 ; 84 L. J. (CH.) 723 ; 113 L. T. 811 ; 31 T. L. R. 469 ; 59 Sol. Jo. 613 ; [1915] H. B. R. 170 118
——— *v.* Schill & Co., Ltd., [1912] 2 K. B. 354 ; 81 L. J. (K. B.) 752 ; 106 L. T. 875 ; 76 J. P. 298 ; 28 T. L. R. 400 ; 19 Manson, 199 98
Garden Mining Co. *v.* McLister (1875), 1 App. Cas. 39 ; 38 L. T. 408 ; 24 W. R. 744 123
——— Village (Hull), Ltd., *Re*, [1923] 1 Ch. 230 ; 92 L. J. (CH.) 289 ; 129 L. T. 452 ; 39 T. L. R. 214 ; 67 Sol. Jo. 365 . . 137

PAGE

Gardner *v.* Iredale, [1912] 1 Ch. 700 ; 81 L. J. (CH.) 531 ; 106 L. T. 860 ; 19 Manson, 245 . . . . . 93, 220
Gartside *v.* Silkstone, etc., Co. (1882), 21 Ch. D. 762 ; 51 L. J. (CH.) 828 ; 47 L. T. 76 ; 31 W. R. 36 164
Geipel *v.* Peach, [1917] 2 Ch. 108 ; 86 L. J. (CH.) 745 ; 117 L. T. 84 ; 61 Sol. Jo. 460 65
General Auction, etc., Co. *v.* Smith, [1891] 3 Ch. 432 ; 60 L. J. (CH.) 723 ; 65 L. T. 188 ; 40 W. R. 106 152
——— Motor Cab Co., *In re*, [1913] 1 Ch. 377 ; 81 L. J. (CH.) 505 ; 106 L. T. 709 ; 28 T. L. R. 352 ; 19 Manson, 272, C. A. 319
——— Rolling Stock Co., *In re* (1872), 7 Ch. App. 646 . . 285
Gibbs and West's Case, *In re* (1870), L. R. 10 Eq. 312 ; 39 L. J. (CH.) 667 ; 23 L. T. 350 ; 18 W. R. 938 291
Glasdir Copper Mines, Limited, *In re*, [1905] 1 Ch. 819 ; 73 L. J. (CH.) 461 ; 90 L. T. 412 ; 21 T. L. R. 354 ; 20 Eq. 337 ; 11 Manson, 224 ; affirmed, [1906] 1 Ch. 365 ; 75 L. J. (CH.) 109 ; 94 L. T. 8 ; 22 T. L. R. 101 ; 13 Manson, 41, C. A. . 189, 193
Globe, etc., Steel Co., *In re* (1875), L. R. 20 Eq. 337 ; 44 L. J. (CH.) 580 ; 23 W. R. 823 251
Glossop *v.* Glossop, [1907] 2 Ch. 370 ; 76 L. J. (CH.) 610 ; 97 L. T. 372 ; 14 Manson, 246 209
Gluckstein *v.* Barnes, [1900] A. C. 240 ; 69 L. J. (CH.) 385 ; 82 L. T. 393 ; 16 T. L. R. 321 ; 7 Manson, 321 77
Glyncorrwg Colliery Co., *Re*, Railway Debenture and General Trust Co. *v.* The Co., [1926] Ch. 951 ; 96 L. J. (CH.) 43 ; 136 L. T. 159 ; 70 Sol. Jo. 857. 283
Goldburg, *In re*, [1912] 1 K. B. 384 ; 81 L. J. (K. B.) 382 ; 105 L. T. 959 ; 19 Manson, 44 287
Gonville's Trustees *v.* Patent Caramel Co., [1912] 1 K. B. 599 ; 81 L. J. (K. B.) 291 ; 105 L. T. 831 ; 19 Manson, 37 . . . 287
Goodfellow *v.* Nelson Line, Ltd., [1912] 2 Ch. 324 ; 81 L. J. (CH.) 564 ; 107 L. T. 344 ; 28 T. L. R. 461 ; 19 Manson, 265 . . 171
Goodwin *v.* Robarts (1875), L. R. 10 Ex. 337 173
Gorissen's Case (1873), 8 Ch. App. 507 ; 42 L. J. (CH.) 864 ; 28 L. T. 611 ; 21 W. R. 536 88
Gorringe *v.* Irwell Works (1886), 34 Ch. D. 128 ; 56 L. J. (CH.) 85 ; 55 L. T. 572 ; 35 W. R. 86, C. A. 288
Gosling *v.* Gaskell, [1897] A. C. 575 ; 66 L. J. (Q. B.) 848 ; 77 L. T. 314 189
Governments Stock Co. *v.* Manila Rail. Co., [1897] A. C. 81 ; 66 L. J. (CH.) 102 ; 75 L. T. 553 ; 45 W. R. 353 . . 165, 166
Goy & Co., *In re*, [1900] 2 Ch. 149 ; 69 L. J. (CH.) 481 ; 83 L. T. 309 ; 48 W. R. 425 ; 16 T. L. R. 310 . . . . 168, 180
Gray *v.* Stone & Funnell (1893), 69 L. T. 282 ; 3 R. 692 . . 128
Great Northern Salt, etc., Works, *In re* (1890), 44 Ch. D. 472 ; 59 L. J. (CH.) 288 ; 62 L. T. 231 ; 2 Meg. 46 203
Greenwood *v.* Algesiras Rly. Co., [1894] 2 Ch. 205 ; 63 L. J. (CH.) 670 ; 71 L. T. 133 ; 1 Manson, 455 ; 7 R. 620, C. A. 192
——— *v.* Leather Shod Wheel Co., [1900] 1 Ch. 421 ; 69 L. J. (CH.) 131 ; 81 L. T. 595 ; 16 T. L. R. 117, C. A. . . 63, 78

PAGE
Greenwood & Co., *In re*, [1900] 2 Q. B. 306; 69 L. J. (Q. B.) 751; 82 L. T. 843; 48 W. R. 607 256
Gregory Love & Co., Ltd., *Re*, [1916] 1 Ch. 203; 85 L. J. (CH.) 281; 114 L. T. 395; 32 T. L. R. 210; 60 Sol. Jo. 221; [1916] H. B. R. 42 . . . . . 178, 183, 288
Greymouth Point Elizabeth Railway & Coal Co., *In re*, [1904] 1 Ch. 32; 73 L. J. (CH.) 92; 11 Manson, 85 204
Grundy *v.* Briggs, [1910] 1 Ch. 444; 79 L. J. (CH.) 244; 101 L. T. 901; 54 Sol. Jo. 163; 17 Manson, 30 206
Guardian Assurance Co., Ltd., *Re*, [1917] 1 Ch. 431; 86 L. J. (CH.) 214; 116 L. T. 193; 33 T. L. R. 169; [1917] H. B. R. 113, C. A. 274

H.

Hadleigh Castle Gold Mines, *In re*, [1900] 2 Ch. 419; 69 L. J. (CH.) 631; 83 L. T. 400; 16 T. L. R. 468 227
Hall (W. J.) & Co., Ltd., *In re*, [1909] 1 Ch. 521; 78 L. J. (CH.) 382; 100 L. T. 692; 16 Manson, 152 132
Hamilton *v.* Vaughan Sherrin Co., [1894] 3 Ch. 589; 63 L. J. (CH.) 795; 71 L. T. 325; 43 W. R. 126; 8 R. 750 87
Hardoon *v.* Belilios, [1901] A. C. 118; 70 L. J. (P. C.) 9; 83 L. T. 573; 49 W. R. 209; 17 T. L. R. 126 96
Harper's Ticket Co., *In re*, [1912] W. N. 263; 29 T. L. R. 63; 57 Sol. Jo. 78 290
Harris Calculating Machine Co., *Re*, [1914] 1 Ch. 920; 83 L. J. (CH.) 545; 110 L. T. 997; 58 Sol. Jo. 455 . . . . 153, 170
Hastings Corporation *v.* Letton, [1908] 1 K. B. 378; 77 L. J. (K. B.) 149; 97 L. T. 582; 20 T. L. R. 456; 15 Manson, 58 263
Hay's Case, *In re* Canadian Oil Works Corporation (1875), 10 Ch. App. 593; 44 L. J. (CH.) 721; 33 L. T. 466; 24 W. R. 191 . 206
Haycraft Gold Reduction & Mining Co., *Re*, [1900] 2 Ch. 230; 69 L. J. (CH.) 496; 83 L. T. 166; 16 T. L. R. 350; 7 Manson, 243 255
Heaton and Dugard, Ltd. *v.* Cutting Brothers, Ltd., [1925] 1 K. B. 655; 94 L. J. (K. B.) 673; 133 L. T. 41; 41 T. L. R. 286 . 167
Helbert *v.* Banner (1871), L. R. 5 H. L. 28; 40 L. J. (CH.) 410; 20 W. R. 63 93
Henderson's Nigel, Ltd., *Re*, [1911] W. N. 159; 105 L. T. 370 . 264
Hercules Insurance Co., *Re* (1871), L. R. 11 Eq. 321; 40 L. J. (CH.) 379 57
Herring, *In re*, [1908] 2 Ch. 493; 77 L. J. (CH.) 665; 99 L. T. 144; 24 T. L. R. 747 158
Herts and Essex Waterworks Co., Ltd., *In re*, [1909] W. N. 48 . 179
Hickman *v.* Kent or Romney Marsh Sheepbreeders' Association, [1915] 1 Ch. 881; 84 L. J. (CH.) 688; 113 L. T. 159; 59 Sol. Jo. 478 47

PAGE

Hilder *v.* Dexter, [1902] A. C. 474; 71 L. J. (CH.) 781; 87 L. T. 311; 51 W. R. 225; 18 T. L. R. 800; 7 Com. Cas. 258; 9 Manson, 378 196

Hill's Waterfall, etc., Co., *In re*, [1896] 1 Ch. 947; 65 L. J. (CH.) 476; 74 L. T. 341; 3 Manson, 158 271

Hinds *v.* Buenos Ayres, etc., Co., [1906] 2 Ch. 654; 76 L. J. (CH.) 17; 95 L. T. 780; 23 T. L. R. 6; 13 Manson, 411. . . 163, 231

Hoare *v.* British Columbia Co., [1912] W. N. 235; 47 L. J. (N. C.) 677; 107 L. T. 602 175

——— & Co., Ltd., *In re*, [1904] 2 Ch. 208; 73 L. J. (CH.) 601; 91 L. T. 115; 53 W. R. 51; 20 T. L. R. 581; 11 Manson, 307, C. A. 149

Home & Foreign Investment Co., *Re*, [1912] 1 Ch. 72; 81 L. J. (CH.) 364; 106 L. T. 259; 56 Sol. Jo. 124; 19 Manson, 188 . . 134

Hong Kong & China Gas Co. *v.* Glen, [1914] 1 Ch. 527; 83 L. J. (CH.) 561; 110 L. T. 859; 30 T. L. R. 339; 58 Sol. Jo. 380; 21 Manson, 242 92

Hoole *v.* Great Western Rail. Co. (1867), 3 Ch. App. 262; 17 L. T. 153; 16 W. R. 260 150

Hooper *v.* Herts, [1906] 1 Ch. 549; 75 L. J. (CH.) 253; 94 L. T. 324; 54 W. R. 350; 13 Manson, 85, C. A. 110

Hopkinson *v.* Mortimer, Harley & Co., [1917] 1 Ch. 646; 86 L. J. (CH.) 467; 116 L. T. 676; 61 Sol. Jo. 384 122

Horne (W. C.) & Sons, Ltd., *In re*, [1906] 1 Ch. 271; 75 L. J. (CH.) 206; 54 W. R. 278; 13 Manson, 165 186

Houghton (J. C.) & Co. *v.* Nothard, Lowe and Wills, [1928] A. C. 1; 97 L. J. (K. B.) 76; 138 L. T. 210; 44 T. L. R. 76 . . . 53

Houldsworth *v.* Glasgow Bank (1880), 5 App. Cas. 317; 42 L. T. 194; 28 W. R. 677 62

House Property Co., Ltd., *Re*, [1912] W. N. 110; 106 L. T. 949; 56 Sol. Jo. 505 140

Household Insurance Co. *v.* Grant (1878), 4 Ex. D. 216; 48 L. J. (EX.) 577; 41 L. T. 298; 27 W. R. 858 102

Howard *v.* Patent Ivory Co. (1888), 38 Ch. D. 156; 57 L. J. (CH.) 878; 58 L. T. 395; 36 W. R. 801 53

——— *v.* Sadler, [1893] 1 Q. B. 1; 86 L. T. 120; 41 W. R. 126; 37 Sol. Jo. 49; 5 R. 45 206

Hubbard & Co., *Re*, [1898] W. N. 158; 68 L. J. (CH.) 54; 79 L. T. 665; 5 Manson, 360 183

Humphrey and Denman, Ltd. *v.* Kavanagh (1925), 41 T. L. R. 378, C. A. 102

Hutton *v.* Scarborough Cliff Hotel Co. (1865), 2 Dr. & Sm. 521; 13 L. T. 57; 11 Jur. (N. S.) 849; 13 W. R. 1059; affirmed, 4 De G. J. & Sm. 672; 34 L. J. (CH.) 643 49

I.

Ilfracombe Building Society, *In re*, [1901] 1 Ch. 102; 70 L. J. (CH.) 66; 84 L. T. 146; 17 T. L. R. 44 256

PAGE
Imperial Silver Quarries Co., *In re* (1868), 16 W. R. 1220 . . 258
——— Wine Co., *Re*, Shirreff's Case (1872), L. R. 14 Eq. 417; 42 L. J. (CH.) 5; 27 L. T. 367; 20 W. R. 966 . . . 289
Ind Coope & Co., Ltd., *Re*, [1911] 2 Ch. 223; 80 L. J. (CH.) 661; 105 L. T. 356; 55 Sol. Jo. 600 166
Indian Mechanical Gold Co., *In re*, [1891] 3 Ch. 538; 61 L. J. (CH.) 33; 40 W. R. 184 26
Industrial Assurance Association, *Re*, [1910] W. N. 254; 45 L. J. (N. C.) 807; 130 L. T. Jo. 81 259
Inland Revenue Commissioners *v.* Blott, [1921] 2 A. C. 171; 90 L. J. (K. B.) 1028; 125 L. T. 497; 37 T. L. R. 762; 65 Sol. Jo. 642 150
Inland Revenue Commissioners *v.* Fisher's Executors, [1926] A. C. 395; 95 L. J. (K. B.) 487; 134 L. T. 681; 42 T. L. R. 340; 10 Tax Cas. 302 150
Inland Revenue Commissioners *v.* Wright, [1927] 1 K. B. 333; 95 L. J. (K. B.) 982; 135 L. T. 718, C. A. 150
Inman *v.* Ackroyd and Best, Ltd., [1901] 1 K. B. 613; 70 L. J. (K. B.) 450; 84 L. T. 344; 49 W. R. 369; 17 T. L. R. 293; 8 Manson, 291, C. A. 210
Ireland *v.* Hart, [1902] 1 Ch. 522; 71 L. J. (CH.) 276; 86 L. T. 385; 50 W. R. 315; 18 T. L. R. 253; 9 Manson, 209 . . . 111
Isaacs *v.* Chapman, [1916] W. N. 28; 32 T. L. R. 237 . . 224

J.

Jackson *v.* Dickinson, [1903] 1 Ch 947; 72 L. J. (CH.) 761; 88 L. T. 507; 19 T. L. R. 350 216
——— & Bassford, *In re*, [1906] 2 Ch. 467; 75 L. J. (CH.) 697; 95 L. T. 292; 22 T. L. R. 708; 13 Manson, 306 . . 178, 287
James *v.* Buena Ventura Syndicate, Ltd., [1896] 1 Ch. 456; 65 L. J. (CH.) 284; 74 L. T. 1; 44 W. R. 372, C. A. . . 115
Jewish Colonial Trust, Ltd., *In re*, [1908] 2 Ch. 287; 77 L. J. (CH.) 629; 99 L. T. 243; 24 T. L. R. 595; 15 Manson, 279 . . 26
John Morley Building Co., *In re*, [1891] 2 Ch. 386; 60 L. J. (CH.) 496; 64 L. T. 856; 39 W. R. 619 203
Johnson (I. C.) & Co., Ltd., *In re*, [1902] 2 Ch. 101; 71 L. J. (CH.) 576; 86 L. T. 791; 50 W. R. 482; 9 Manson, 307, C. A. . 179
Joint Stock Discount Co. *v.* Brown (1869), L. R. 8 Eq. 381; 20 L. T. 844; 17 W. R. 1037 216
Jones *v.* Pacaya Rubber Estate Co., Ltd., [1911] 1 K. B. 455; 80 L. J. (K. B.) 155; 104 L. T. 446; 18 Manson, 139, C. A. . 123
Jowitt, *Re*, Jowitt *v.* Keeling, [1922] 2 Ch. 442; 91 L. J. (CH.) 449; 127 L. T. 466; 38 T. L. R. 688; 66 Sol. Jo. 577 . . . 144
Jubilee Cotton Mills, *Re*, [1923] 1 Ch. 1; 91 L. J. (CH.) 777; 128 L. T. 200; 38 T. L. R. 891; 67 Sol. Jo. 62; [1922] B. & C. R. 229, C. A.; reversed, Jubilee Cotton Mills, Ltd. *v.* Lewis, [1924] A. C. 958; 93 L. J. (CH.) 414; 131 L. T. 579; 40 T. L. R. 621; 68 Sol. Jo. 663; [1925] B. & C. R. 16 . . 58, 59

PAGE

Jubilee Sites Syndicate, *In re*, [1899] 2 Ch. 204 ; 68 L. J. (CH.) 427 ; 80 L. T. 869 ; 47 W. R. 606 ; 15 T. L. R. 391 ; 6 Manson, 331 277

K.

Karamelli and Barnett, Ltd., *In re*, [1917] 1 Ch. 203 ; 115 L. T. 753 ; [1917] H. B. R. 102 . . . . . 188, 295
Kaslo-Slocan Mining, etc., Corporation, Ltd., *Re*, [1910] W. N. 13 ; 45 L. J. (N. C.) 55 ; 128 L. T. Jo. 266. 255
Keatinge *v.* Paringa Mines, Ltd., [1902] W. N. 15 ; 18 T. L. R. 266. 196
Kelantan Coco Nut Estates, Ltd. & Reduced, *Re*, [1920] W. N. 274 ; 55 L. Jo. 286 ; 150 L. T. Jo. 54 ; 64 Sol. Jo. 700 . . . 223
Kelner *v.* Baxter (1866), L. R. 2 C. P. 174 ; 36 L. J. (C. P.) 94 ; 15 L. T. 213 ; 12 Jur. (N. S.) 1016 ; 15 W. R. 278 . . . 55
Kerr *v.* Marine Products (1928), 44 T. L. R. 292 209
Kinatan (Borneo) Rubber, Ltd., *Re*, [1923] 1 Ch. 124 ; 92 L. J. (CH.) 613 ; 128 L. T. 216 ; 39 T. L. R. 53 ; 67 Sol. Jo. 113 . . 280
Kingsbury Collieries, Ltd., *In re*, [1907] 2 Ch. 259 ; 76 L. J. (CH.) 469 ; 96 L. T. 829 ; 23 T. L. R. 497 ; 14 Manson, 212 . . 23
Kingston Cotton Mill Co., *In re* (No. 2), [1896] 2 Ch. 279 ; 65 L. J. (CH.) 673 ; 74 L. T. 568, C. A. 239
Kingston, Miller & Co. *v.* Kingston (Thomas) & Co., [1912] 1 Ch. 575 ; 81 L. J. (CH.) 417 ; 28 T. L. R. 246 ; 56 Sol. Jo. 310 ; 29 R. P. C. 289 19
Kitson Empire Co., *Re*, [1910] W. N. 154 ; 45 L. J. (N. C.) 390 ; 129 L. T. Jo. 133 184
Knight's Case (1867), 2 Ch. App. 321 ; 36 L. J. (CH.) 317 ; 15 L. T. 546 ; 15 W. R. 294 213
Knowles *v.* Scott, [1891] 1 Ch. 717 ; 60 L. J. (CH.) 284 ; 64 L. T. 135 ; 39 W. R. 523 271
Krasnapolsky Co., *In re*, [1892] 3 Ch. 174 ; 61 L. J. (CH.) 593 ; 67 L. T. 51 ; 40 W. R. 639 256
Kreditbank Cassel G. m. b. H. *v.* Schenkers, Ltd., [1927] 1 K. B. 826 ; 96 L. J. (K. B.) 501 ; 136 L. T. 716 ; 43 T. L. R. 237 ; 71 Sol. Jo. 141 ; 32 Com. Cas. 197, C. A. 53
Kreglinger (G. & C.) *v.* New Patagonia Meat Co., Ltd., [1914] A. C. 25 ; 83 L. J. (CH.) 79 ; 109 L. T. 802 ; 30 T. L. R. 114 ; 58 Sol. Jo. 97 ; 51 Sc. L. R. 843 169
Kuala Pahi Rubber Estate *v.* Mowbray, [1914] W. N. 321 ; 111 L. T. 1072 183

L.

Ladies' Dress Association *v.* Pulbrook, [1900] 2 Q. B. 376 ; 69 L. J. (Q. B.) 705 ; 49 W. R. 6 ; 7 Manson, 465, C. A. . 58, 124
Lamb *v.* Sambas Rubber, etc., Co., [1908] 1 Ch. 845 ; 77 L. J. (CH.) 386 ; 98 L. T. 633 ; 15 Manson, 189 . . . 118, 123

PAGE
Land Financiers Association, *Re* (1878), 10 Ch. D. 269; 50 L. J. (CH.) 201; 43 L. T. 753; 29 W. R. 277 295
Lands Allotment Co., *In re*, [1894] 1 Ch. 616; 61 L. J. (CH.) 291; 70 L. T. 286; 42 W. R. 404; 1 Manson, 107; 7 R. 115 87, 199
Lang Propeller, Ltd., *Re* [1927] 1 Ch. 120; 95 L. J. (CH.) 516; 136 L. T. 48; 42 T. L. R. 702; 70 Sol. Jo. 836; [1926] B. & C. R. 127, C. A. 284
Larocque *v.* Beauchemin, [1897] A. C. 358; 66 L. J. (P. C.) 59; 76 L. T. 473; 45 W. R. 639; 4 Manson, 263 . . . . 89, 120
Law Car & General Insurance Co., *Re*, [1912] 1 Ch. 405; 81 L. J. (CH.) 218; 106 L. T. 180; 56 Sol. Jo. 273; 19 Manson, 152; reversed, [1913] 2 Ch. 103; 82 L. J. (CH.) 467; 108 L. T. 862; 29 T. L. R. 532; 57 Sol. Jo. 556; 20 Manson, 227; 6 B. W. C. C. N. 100, C. A. 281, 285
Lawrence *v.* West Somerset Mineral Railway, [1918] 2 Ch. 250; 87 L. J. (CH.) 513; 119 L. T. 509; 62 Sol. Jo. 652. . . 147
Laxon & Co., *In re*, [1892] 3 Ch. 555; 61 L. J. (CH.) 657; 67 L. T. 85; 40 W. R. 621 29
Lee *v.* Neuchatel Asphalte Co. (1887), 41 Ch. D. 1; 58 L. J. (CH.) 408; 61 L. T. 11; 37 W. R. 321; 1 Meg. 140, C. A. . 146, 147
Leeds Estate Co. *v.* Shepherd (1887), 36 Ch. D. 787; 57 L. J. (CH.) 46; 57 L. T. 684; 36 W. R. 322 . . . . . 214, 239
Lemon *v.* Austin Friars Investment Trust, Ltd., [1926] 1 Ch. 1; 95 L. J. (CH.) 97; 133 L. T. 790; 41 T. L. R. 629, C. A. . 157
Levi *v.* Ayres (1878), 3 App. Cas. 852 113
—— & Co., Ltd., *Re*, [1919] 1 Ch. 416; 88 L. J. (CH.) 233; 120 L. T. 531; 35 T. L. R. 334; 63 Sol. Jo. 373; [1918–19] B. & C. R. 154 291
Leyton Cycle Co., *Re*, [1901] W. N. 225 259
Liberator Society, *In re* (1893), 71 L. T. 406; 15 R. 149 . . 290
Ligonel Spinning Co., *In re*, [1900] 1 I. R. 326 283
Lister (Henry) & Co., Ltd., *Re*, *Ex parte* Huddersfield Banking Co., [1892] 2 Ch. 419; 61 L. J. (CH.) 721; 67 L. T. 180; 40 W. R. 589: 285
Liverpool Household Stores Association, *Re* (1890), 59 L. J. (CH.) 616; 62 L. T. 873; 2 Meg. 217 213
Llewellyn *v.* Kasintoe Co., [1914] 2 Ch. 670; 84 L. J. (CH.) 70; 112 L. T. 676; 30 T. L. R. 683; 58 Sol. Jo. 808, C. A. . . 318
Lloyd *v.* Grace, Smith & Co., [1912] A. C. 716; 81 L. J. (K. B.) 1140; 107 L. T. 531; 28 T. L. R. 547; 56 Sol. Jo. 723 . . . 105
Loch *v.* John Blackwood, Ltd., [1924] A. C. 783; 93 L. J. (P. C.) 257; 131 L. T. 719; 40 T. L. R. 732; 68 Sol. Jo. 735; [1924] B. & C. R. 209 . . . . . 252, 253
Lock *v.* Queensland Investment Co., [1896] A. C. 461; 65 L. J. (CH.) 798; 75 L. T. 3; 45 W. R. 65 . . . . . 48, 120
Locke & Smith, *Re*, [1914] 1 Ch. 687; 83 L. J. (CH.) 650; 110 L. T. 683; 58 Sol. Jo. 379; 21 Manson, 267 172
London and Hull Soap Works, *In re*, [1907] W. N. 254. . . 252
———— Northern Bank, *Re*, Mack's Claim, [1900] W. N. 114 . 207
———— Northern S.S. Co., Ltd. *v.* Farmer, [1914] W. N. 200; 111 L. T. 204; 58 Sol. Jo. 594 120

PAGE

London and South Western Canal Co., *Re*, [1911] 1 Ch. 346; 80 L. J. (CH.) 234; 104 L. T. 95; 18 Manson, 171 . . . 207
London Electrobus Co., *In re*, [1906] W. N. 147; 22 T. L. R. 677 . 86
——— Financial Association *v.* Kelk (1883), 26 Ch. D. 107; 53 L. J. (CH.) 1025; 50 L. T. 492, C. A. . . . 48
——— General Bank, *Re* (No. 2), [1895] 2 Ch. 673; 64 L. J. (CH.) 866; 73 L. T. 304; 44 W. R. 80; 2 Manson, 555; 12 R. 520. 238
——— Joint City & Midland Bank *v.* Dickinson, [1922] W. N. 13; 153 L. T. Jo. 20 287
——— Pressed Hinge Co., *In re*, [1905] 1 Ch. 576; 74 L. J. (CH.) 321; 92 L. T. 409; 53 W. R. 407; 21 T. L. R. 322; 12 Manson, 219 . . . . . 190, 257
——— United Breweries, Ltd., *In re*, [1907] 2 Ch. 511; 76 L. J. (CH.) 612; 97 L. T. 541; 14 Manson, 250 189
Longman *v.* Bath Electric Tramways, Ltd., [1905] 1 Ch. 646; 74 L. J. (CH.) 424; 92 L. T. 743; 53 W. R. 480; 21 T. L. R 373; 12 Manson, 147, C. A. 95, 105, 112
Lubbock *v.* British Bank of South America, [1892] 2 Ch. 198; 61 L. J. (CH.) 498; 67 L. T. 74; 41 W. R. 103; 8 T. L. R. 472 . 149
Lundy Granite Co., *In re* (1872), 26 L. T. 673; 20 W. R. 519, C. A. 210
Lyster's Case (1867), L. R. 4 Eq. 233; 36 L. J. (CH.) 616; 16 L. T. 824; 31 J. P. 726; 15 W. R. 1007 205

M.

MacConnell *v.* E. Prill & Co., Ltd., [1916] 2 Ch. 57; 85 L. J. (CH.) 674; 115 L. T. 71; 32 T. L. R. 509; 60 Sol. Jo. 556 . 222, 226
Mack's Claim. *See* London and Northern Bank, *Re*, Mack's Claim.
Mackereth *v.* Wigan Coal Co., [1916] 2 Ch. 293; 85 L. J. (CH.) 601; 115 L. T. 107; 32 T. L. R. 521 95
Macleay *v.* Tait, [1906] A. C. 24; 75 L. J. (CH.) 90; 94 L. T. 68; 54 W. R. 365; 22 T. L. R. 149; 50 Sol. Jo. 125; 13 Manson, 24 . . . . . 77, 78
McMahon *v.* North Kent Iron Works, [1891] 2 Ch. 148; 60 L. J. (CH.) 372; 64 L. T. 317; 39 W. R. 349; 7 T. L. R. 303; 35 Sol. Jo. 298 190
McMillan *v.* Le Roi Mining Co., [1906] 1 Ch. 331; 75 L. J. (CH.) 174; 94 L. T. 160; 54 W. R. 281; 22 T. L. R. 186; 13 Manson, 65 224
Madame Tussaud & Sons, Ltd., *Re*. *See* Tussaud (Madame) & Sons, Ltd., *Re*.
Maidstone Palace, Ltd., *In re*, [1909] 2 Ch. 283; 78 L. J. (CH.) 739; 101 L. T. 458; 16 Manson, 260 187
Mair *v.* Rio Grande Rubber Estates, Ltd., [1913] A. C. 853; 83 L. J. (P. C.) 35; 109 L. T. 610; 29 T. L. R. 692; 57 Sol. Jo. 728; 20 Manson, 342; [1913] S. C. (H. L.) 74; 50 Sc. L. R. 876 63
Manihot Rubber Plantations, Ltd., *Re* (1919), 63 Sol. Jo. 827 . 86

PAGE

Marine Mansions Co., *Re* (1867), L. R. 4 Eq. 601 ; 37 L. J. (CH.) 113 ; 17 L. T. 50 286

Marlborough Club Co., *In re* (1868), L. R. 5 Eq. 365 ; 37 L. J. (CH.) 296 ; 18 L. T. 46 ; 16 W. R. 668. 282

Marshall *v.* Morrison, [1907] W. N. 29 77

——— *v.* South Staffordshire Tramways, [1895] 2 Ch. 36 ; 64 L. J. (CH.) 481 ; 72 L. T. 542 ; 43 W. R. 469 ; 11 T. L. R. 339 ; 39 Sol. Jo. 414 ; 2 Manson, 292 ; 12 R. 275, C. A. . 192

Marshall's Valve Gear Co., Ltd. *v.* Manning, Wardle & Co., Ltd., [1909] 1 Ch. 267 ; 78 L. J. (CH.) 46 ; 100 L. T. 65 ; 25 T. L. R. 69 ; 15 Manson, 379 . . . . . 49, 208, 212

Maskelyne British Typewriter, *In re*, [1898] 1 Ch. 133 ; 67 L. J. (CH.) 125 ; 77 L. T. 579 ; 46 W. R. 294 ; 14 T. L. R. 108 ; 42 Sol. Jo. 112, C. A. 191

Masonic Co. *v.* Sharpe, *Re* Sharpe. *See* Sharpe, *Re*, Masonic Co. *v.* Sharpe.

Mears *v.* Western Canada Pulp Co., [1905] 2 Ch. 353 ; 74 L. J. (CH.) 581 ; 93 L. T. 150 ; 54 W. R. 176 ; 21 T. L. R. 661 ; 49 Sol. Jo. 634 ; 12 Manson, 295, C. A. 73

Measures Brothers, Ltd. *v.* Measures, [1910] 1 Ch. 336 ; 102 L. T. 7 ; 26 T. L. R. 251 ; 54 Sol. Jo. 249 ; affirmed, [1910] 2 Ch. 248 ; 79 L. J. (CH.) 707 ; 102 L. T. 794 ; 26 T. L. R. 488 ; 54 Sol. Jo. 521 ; 18 Manson, 40, C. A. 288

Medical Battery Co., *Re*, [1894] 1 Ch. 444 ; 63 L. J. (CH.) 189 ; 69 L. T. 799 ; 42 W. R. 191 ; 38 Sol. Jo. 81 ; 1 Manson, 104 ; 8 R. 46 253

Melson (Alfred) & Co., *Re*, [1906] 1 Ch. 841 ; 75 L. J. (CH.) 509 ; 94 L. T. 641 ; 54 W. R. 468 ; 22 T. L. R. 500 ; 50 Sol. Jo. 464 ; 13 Manson, 190 257

Menier *v.* Hooper's Telegraph Works (1874), 9 Ch. App. 350 ; 43 L. J. (CH.) 330 ; 30 L. T. 209 ; 22 W. R. 396 . . . 49

Metropolitan Amalgamated Estates, Ltd., *Re*, [1912] 2 Ch. 497 ; 81 L. J. (CH.) 745 ; 107 L. T. 545. . . . 187

——— Coal Association *v.* Scrimgeour, [1895] 2 Q. B. 604 ; 65 L. J. (Q. B.) 22 ; 73 L. T. 137 ; 44 W. R. 35 ; 11 T. L. R. 526 ; 39 Sol. Jo. 654 ; 2 Manson, 579 ; 14 R. 729, C. A. 195

——— Saloon Omnibus Co., *Re* (1859), 28 L. J. (CH.) 830 ; 33 L. T. (O. S.) 279 ; 5 Jur. (N. S.) 922 ; 7 W. R. 636 . . . 255

Meux's Brewery Co., Ltd., *Re*, [1919] 1 Ch. 28 ; 88 L. J. (CH.) 14 ; 119 L. T. 759 ; 35 T. L. R. 13 ; 63 Sol. Jo. 40 . . . 142

Midland Express, Ltd., *Re*, [1913] 1 Ch. 499 ; 82 L. J. (CH.) 291 ; 108 L. T. 489 ; 29 T. L. R. 347 ; 57 Sol. Jo. 446 ; 20 Manson, 151 ; affirmed, [1914] 1 Ch. 41 ; 83 L. J. (CH.) 153 ; 109 L. T. 697 ; 30 T. L. R. 38 ; 58 Sol. Jo. 47 ; 21 Manson, 34, C. A. 163

Monolithic Building Co., *Re*, [1915] 1 Ch. 643 ; 84 L. J. (CH.) 441 ; 112 L. T. 619 ; 59 Sol. Jo. 332, C. A. 179

Moore *v.* North Western Bank, [1891] 2 Ch. 599 ; 60 L. J. (CH.) 627 ; 64 L. T. 456 ; 40 W. R. 93 ; 7 T. L. R. 430 . . . 111

PAGE

Moriarty *v.* Regent's Garage Co., [1921] 1 K. B. 423; 90 L. J. (K. B.) 783; 37 T. L. R. 180; reversed, [1921] 2 K. B. 766; 90 L. J. (K. B.) 783; 125 L. T. 560; 37 T. L. R. 531; 65 Sol. Jo. 474 210

Morrice *v.* Aylmer (1874), 10 Ch. App. 148; 44 L. J. (CH.) 212; 31 L. T. 660; 23 W. R. 107, 221; affirmed (1875), L. R. 7 H. L. 717; 45 L. J. (CH.) 614; 34 L. T. 418; 24 W. R. 587 . 135

Morris *v.* Harris, [1927] A. C. 252; 96 L. J. (CH.) 253; 136 L. T. 587; [1927] B. & C. R. 65 264

Morrison, *In re*, [1901] 1 Ch. 701; 70 L. J. (CH.) 399; 84 L. T. 383; 49 W. R. 441; 17 T. L. R. 330; 8 Manson, 210 88

——— *v.* Trustees Corporation, [1898] W. N. 154; 68 L. J. (CH.) 11; 79 L. T. 605; 15 T. L. R. 34; 43 Sol. Jo. 41; 5 Manson, 356, C. A. 121

———, Jones & Taylor, Ltd., *Re*, [1914] 1 Ch. 50; 83 L. J. (CH.) 129; 109 L. T. 722; 30 T. L. R. 59; 58 Sol. Jo. 80, C. A. . 167

Mosely *v.* Koffyfontein Mines, [1904] 2 Ch. 108; 73 L. J. (CH.) 569; 91 L. T. 266; 53 W. R. 140; 20 T. L. R. 557; 48 Sol. Jo. 507; 11 Manson, 294, C.A. . . 91, 92, 182

——— *v.* Koffyfontein Mines, Ltd., [1910] 2 Ch. 382; 79 L. J. (CH.) 647; 103 L. T. 139; 26 T. L. R. 585; 54 Sol. Jo. 652; reversed, [1911] 1 Ch. 73; 80 L. J. (CH.) 111; 103 L. T. 616; 27 T. L. R. 61; 55 Sol. Jo. 44; 18 Manson, 86, C. A.; affirmed, [1911] A. C. 409; 80 L. J. (CH.) 668; 105 L. T. 115; 27 T. L. R. 501; 55 Sol. Jo. 551; 18 Manson, 365 . . . 136, 148

Moss (Saul) & Sons, Ltd., *Re*, [1906] W. N. 142; 50 Sol. Jo. 575 . 262

—— Steamship Co. *v.* Whinney, [1912] A. C. 254; 81 L. J. (K. B.) 674; 105 L. T. 305; 27 T. L. R. 513; 55 Sol. Jo. 631; 12 Asp. M. L. C. 25; 16 Com. Cas. 247; 49 Sc. L. R. 630 . 189, 191

Mother Lode Gold Mines *v.* Hill (1903), 19 T. L. R. 341 . . 90

Muirhead *v.* Forth, etc., Mutual Insurance Association, [1894] A. C. 72; 10 T. L. R. 82; 6 R. 59 52

N.

Nash *v.* Calthorpe, [1905] 2 Ch. 237; 74 L. J. (CH.) 493; 93 L. T. 585; 21 T. L. R. 587; 12 Manson, 260, C. A. . . 77

—— *v.* Lynde, [1929] A. C. 158; 45 T. L. R. 42 . . . 68

Natal Land Co. *v.* Pauline Colliery Syndicate, Ltd., [1904] A. C. 120; 73 L. J. (P. C.) 22; 89 L. T. 678; 11 Manson, 29. . 55

National Bank of Wales, *In re*, [1897] 1 Ch. 298; 66 L. J. (CH.) 222; 76 L. T. 1; 45 W. R. 401; 13 T. L. R. 179; 4 Manson, 59, C. A. 121

——— Bank of Wales, *Re*, [1899] 2 Ch. 629; 68 L. J. (CH.) 634; 81 L. T. 363; 48 W. R. 99; 15 T. L. R. 517; 43 Sol. Jo. 705, C. A.; affirmed, *sub nom.*, Dovey *v.* Cory, [1901] A. C. 477; 70 L. J. (CH.) 753; 85 L. T. 257; 50 W. R. 65; 17 T. L. R. 732; 8 Manson, 346 . . . . . 148, 215

PAGE
National Debenture Corporation, *In re*, [1891] 2 Ch. 505; 60 L. J. (CH.) 533; 64 L. T. 512; 39 W. R. 707; 7 T. L. R. 485, C. A. 58
——— Distribution of Electricity Co., Ltd., *Re*, [1902] 2 Ch. 34; 71 L. J. (CH.) 702; 87 L. T. 6; 9 Manson, 314, C. A. . 272
——— Dwellings Society *v.* Sykes, [1894] 3 Ch. 159; 63 L. J. (CH.) 906; 42 W. R. 696; 10 T. L. R. 563; 38 Sol. Jo. 601; 1 Manson, 457; 8 R. 758 223
——— Finance Co., *Re*, [1866] W. N. 243; 14 L. T. 749; 14 W. R. 907 251
——— Livestock Co., *Re*, [1917] 1 Ch. 628; 86 L. J. (CH.) 391; 116 L. T. 466; [1916] H. B. R. 154 287
——— Motor Mail-Coach Co., Ltd., *Re*, Clinton's Claim, [1908] 2 Ch. 515; 77 L. J. (CH.) 790; 99 L. T. 632; 15 Manson, 362, C. A. 55
——— Telephone Co., *In re*, [1914] 1 Ch. 755; 83 L. J. (CH.) 552; 109 L. T. 389; 29 T. L. R. 682; 58 Sol. Jo. 12. 132
——— Telephone Co. *v.* Constables of St. Peter Port, [1900] A. C. 317; 69 L. J. (P. C.) 74; 82 L. T. 398 22
Neale *v.* City of Birmingham Tramways, [1910] 2 Ch. 464; 79 L. J. (CH.) 683; 103 L. T. 59; 26 T. L. R. 588; 54 Sol. Jo. 651; 18 Manson, 100 49
Neath Building Society *v.* Luce (1889), 43 Ch. D. 158; 59 L. J. (CH.) 3; 61 L. T. 611; 38 W. R. 122 154
New Balkis *v.* Randt Gold Mining Co., [1904] A. C. 165; 73 L. J. (K. B.) 384; 90 L. T. 494; 52 W. R. 561; 20 T. L. R. 396; 48 Sol. Jo. 368; 11 Manson, 159 122
—— British Iron Co., *Re*, [1898] 1 Ch. 324; 67 L. J. (CH.) 164; 78 L. T. 155; 46 W. R. 376; 14 T. L. R. 196; 42 Sol. Jo. 234; 5 Manson, 168 47
—— Chile, etc., Co., *In re* (1889), 45 Ch. D. 598; 60 L. J. (CH.) 90; 63 L. T. 344; 39 W. R. 59; 6 T. L. R. 462; 2 Meg. 355 . 123
—— Chinese Antimony Co., Ltd., *Re*, [1916] 2 Ch. 115; 85 L. J. (CH.) 429; 114 L. T. 989; 60 Sol. Jo. 513; [1916] H. B. R. 8 133
—— de Kaap, Ltd., *In re*, [1908] 1 Ch. 589; 77 L. J. (CH.) 374; 98 L. T. 665; 15 Manson, 149 295
—— Flagstaff Co., *In re*, [1889] W. N. 123 317
—— London and Brazilian Bank *v.* Brocklebank (1882), 21 Ch. D. 302; 51 L. J. (CH.) 711; 47 L. T. 3; 30 W. R. 737, C. A. . 127
—— Mashonaland Co., *Re*, [1892] 3 Ch. 577; 61 L. J. (CH.) 617; 67 L. T. 90; 41 W. R. 75; 8 T. L. R. 738; 36 Sol. Jo. 683. 215
—— Omnibus Co., *Re*, [1908] 1 Ch. 621; 77 L. J. (CH.) 358; 98 L. T. 663; 15 Manson, 154 181
—— Westminster Brewery Co., Ltd., *Re*, [1911] W. N. 247; 105 L. T. 946; 56 Sol. Jo. 141 26
—— York Taxi Cab Co., *Re*, [1913] 1 Ch. 1; 82 L. J. (CH.) 41; 107 L. T. 813; 57 Sol. Jo. 98; 19 Manson, 389 . . 171, 190
New Zealand Gold Co. *v.* Peacock, [1894] 1 Q. B. 622; 63 L. J. (Q. B.) 227; 70 L. T. 110; 9 R. 669, C. A. . . . 115, 119

PAGE

New Zealand Midland Rail. Co., *In re*, [1901] 2 Ch. 357 ; 70 L. J. (CH.) 595 ; 84 L. T. 852 ; 49 W. R. 529 ; 45 Sol. Jo. 519 ; 8 Manson, 363, C. A. 186

Newdigate Colliery, Ltd., *Re*, [1912] 1 Ch. 468 ; 81 L. J. (CH.) 235 ; 106 L. T. 133 ; 28 T. L. R. 207 ; 19 Manson, 155, C. A. . . 189

Newspaper Syndicate, *Re*, [1900] 2 Ch. 349 ; 69 L. J. (CH.) 578 ; 83 L. T. 341 ; 16 T. L. R. 452 ; 8 Manson, 65 284

Newton *v.* Birmingham Small Arms Co., Ltd., [1906] 2 Ch. 378 ; 75 L. J. (CH.) 627 ; 95 L. T. 135 ; 54 W. R. 621 ; 22 T. L. R. 664 ; 50 Sol. Jo. 593 ; 13 Manson, 267. . 237

——— *v.* Debenture Holders of Anglo-Australian Co., [1895] A. C. 244 ; 64 L. J. (P. C.) 57 ; 72 L. T. 305 ; 43 W. R. 401 ; 11 T. L. R. 278 ; 2 Manson, 246 ; 11 R. 438 154

Niger Merchants' Co. *v.* Capper (1877), 18 Ch. D. 557, n. ; 25 W. R. 365 258

Nordberg, Ltd., *In re*, [1915] 2 Ch. 439 ; 84 L. J. (CH.) 830 ; 113 L. T. 988 ; 59 Sol. Jo. 717 137

Normandy *v.* Ind, Coope & Co., Ltd., [1908] 1 Ch. 84 ; 77 L. J. (CH.) 82 ; 97 L. T. 872 ; 24 T. L. R. 57 ; 15 Manson, 65 208, 222

North Eastern Insurance Co., *Re*, [1919] 1 Ch. 198 ; 88 L. J. (CH.) 121 ; 120 L. T. 223 ; 63 Sol. Jo. 117 204

——— West Transportation Co. *v.* Beatty (1887), 12 App. Cas. 589 ; 56 L. J. (P. C.) 102 ; 57 L. T. 426 ; 36 W. R. 647 ; 3 T. L. R. 789 213

Northern Assurance Co., Ltd. *v.* Farnham Breweries, [1912] 2 Ch. 125 ; 81 L. J. (CH.) 358 ; 106 L. T. 527 ; 28 T. L. R. 305 ; 56 Sol. Jo. 360 ; 19 Manson, 178 171

Northumberland Avenue Hotel Co., *Re* (1886), 33 Ch. D. 16 ; 54 L. T. 777 ; 2 T. L. R. 636, C. A. 56

Norton *v.* Yates, [1906] 1 K. B. 112 ; 75 L. J. (K. B.) 252 ; 54 W. R. 183 ; 50 Sol. Jo. 95 166

O.

Oakbank Oil Co. *v.* Crum (1882), 8 App. Cas. 65 ; 48 L. T. 537 . 143

Olympic Fire & General Co., *Re*, [1920] 2 Ch. 341 ; 89 L. J. (CH.) 544 ; 123 L. T. 786 ; 36 T. L. R. 691, C. A. . . . 196

Omnium Electric Palaces, Ltd. *v.* Baines, [1914] 1 Ch. 332 ; 83 L. J. (CH.) 372 ; 109 L. T. 964 ; 30 T. L. R. 213 ; 58 Sol. Jo. 218 ; 21 Manson, 94, C. A. 61

Ooregum Gold Co. *v.* Roper, [1892] A. C. 125 ; 61 L. J. (CH.) 337 ; 66 L. T. 427 ; 41 W. R. 90 ; 8 T. L. R. 436 ; 36 Sol. Jo. 344 . 90

Oppenheimer, *In re*, [1907] 1 Ch. 399 ; 76 L. J. (CH.) 287 ; 96 L. T. 631 ; 14 Manson, 139 144

Orleans Motor Co., *Re*, [1911] 2 Ch. 41 ; 80 L. J. (CH.) 477 ; 104 L. T. 627 ; 18 Manson, 287 288

Ormerod's Case, [1894] 2 Ch. 474 ; 63 L. J. (CH.) 578 ; 70 L. T. 795 ; 42 W. R. 701 ; 38 Sol. Jo. 459 ; 1 Manson, 153 ; 8 R. 715 86, 197

PAGE
Otto Electrical Co., *In re*, [1906] 2 Ch. 390 ; 75 L. J. (CH.) 682 ; 95 L. T. 141 ; 54 W. R. 601 ; 22 T. L. R. 678 ; 50 Sol. Jo. 616 ; 13 Manson, 301 . . . . . 74, 85
Oxted Motor Co., *Re*, [1921] 3 K. B. 32 ; 90 L. J. (K. B.) 1145 ; 126 L. T. 56 ; 37 T. L. R. 737 ; [1921] B. & C. R. 155 . . . 228

P.

Pacaya Rubber Co., Ltd., *Re*, [1914] 1 Ch. 542 ; 83 L. J. (CH.) 432 ; 110 L. T. 578 ; 30 T. L. R. 260 ; 58 Sol. Jo. 269 ; 21 Manson, 186 63
Pacific Coast Syndicate, *In re*, [1913] 2 Ch. 26 ; 82 L. J. (CH.) 404 ; 108 L. T. 823 ; 57 Sol. Jo. 518 ; 20 Manson, 219 . . . 292
Padstow Assurance Association, *Re* (1882), 20 Ch. D. 137 ; 51 L. J. (CH.) 344 ; 45 L. T. 774 ; 30 W. R. 326, C. A. . . . 260
Palace Restaurants, Ltd., *Re*, [1914] 1 Ch. 492 ; 83 L. J. (CH.) 427 ; 110 L. T. 534 ; 30 T. L. R. 248 ; 58 Sol. Jo. 268 ; 21 Manson, 109, C. A. 286
Palmer's Decoration and Furnishing Co., *In re*, [1904] 2 Ch. 743 ; 73 L. J. (CH.) 828 ; 91 L. T. 772 ; 53 W. R. 142 . . . 169
Panama Co., *In re* (1870), 5 Ch. App. 318 ; 39 L. J. (CH.) 482 ; 22 L. T. 424 ; 18 W. R. 441 165
Paris Skating Rink, *In re* (1877), 5 Ch. D. 959 ; 37 L. T. 298 ; 25 W. R. 701, C. A. 259
Parker *v.* McKenna (1874), 10 Ch. App. 96 ; 44 L. J. (CH.) 425 ; 31 L. T. 738 ; 23 W. R. 271 212
——— and Cooper, Ltd. *v.* Reading, [1926] Ch. 975 ; 96 L. J. (CH.) 23 ; 136 L. T. 117 22
Parkes Garage (Swadlincote), Ltd., *Re*, [1929] 1 Ch. 139 ; 98 L. J. (CH.) 9 ; 140 L. T. 174 ; 45 T. L. R. 11 177
Parsons *v.* Sovereign Bank, [1913] A. C. 160 ; 82 L. J. (P. C.) 60 ; 107 L. T. 572 ; 29 T. L. R. 38 ; 20 Manson, 94 ; 50 Sc. L. R. 635 191
Patent Floor Cloth Co., *In re* (1872), 41 L. J. (CH.) 476 ; 26 L. T. 467 285
——— Invert Sugar Co., Ltd., *Re* (1885), 31 Ch. D. 166 ; 55 L. J. (CH.) 924 ; 53 L. T. 698 ; 34 W. R. 169, C. A. . . . 139
Patentwood Keg Syndicate *v.* Pearse, [1906] W. N. 164 . . 221
Payne *v.* Cork Co., [1900] 1 Ch. 308 ; 69 L. J. (CH.) 156 ; 82 L. T. 44 ; 48 W. R. 325 ; 16 T. L. R. 135 ; 7 Manson, 225 . . 318
Peat *v.* Clayton, [1906] 1 Ch. 659 ; 75 L. J. (CH.) 344 ; 94 L. T. 465 ; 54 W. R. 416 ; 22 T. L. R. 312 ; 13 Manson, 117 . . . 111
Pedlar *v.* Road Block Gold Mines, Ltd., [1905] 2 Ch. 427 ; 74 L. J. (CH.) 753 ; 93 L. T. 665 ; 54 W. R. 44 ; 12 Manson, 422. . 24
Peek *v.* Gurney (1873), L. R. 6 H. L. 377 ; 43 L. J. (CH.) 19 ; 22 W. R. 29 . . . . . 64, 71
Peel *v.* London and North Western Rail. Co., [1907] 1 Ch. 5 ; 76 L. J. (CH.) 152 ; 95 L. T. 897 ; 23 T. L. R. 85 ; 14 Manson, 30, C. A. 212, 225

PAGE

Pegge *v.* Neath, etc., Co., [1898] 1 Ch. 183; 67 L. J. (CH.) 17; 77 L. T. 550; 46 W. R. 243; 14 T. L. R. 62 183

Pellatt's Case (1867), 2 Ch. App. 527; 36 L. J. (CH.) 613; 16 L. T. 442; 15 W. R. 726 93

Penrose *v.* Martyr (1858), E. B. & E. 499; 28 L. J. (Q. B.) 28; 5 Jur. (N. S.) 362; 6 W. R. 603 18

Percival *v.* Wright, [1902] 2 Ch. 421; 71 L. J. (CH.) 846; 51 W. R. 31; 18 T. L. R. 697; 9 Manson, 443 . . . . 86, 200

Perth Electric Tramways, Ltd., *Re*, [1906] 2 Ch. 216; 75 L. J. (CH.) 534; 94 L. T. 815; 54 W. R. 535; 22 T. L. R. 533; 13 Manson, 195 182

Peruvian Rail. Co., *Re*, [1915] 2 Ch. 144; 31 T. L. R. 464; 59 Sol. Jo. 579; affirmed, [1915] 2 Ch. 442; 85 L. J. (CH.) 129; 113 L. T. 1176; 32 T. L. R. 46; 60 Sol. Jo. 25; [1915] H. B. R. 242, C. A. 286

Peruvian Rail. Co. *v.* Thames, etc., Co. (1867), 2 Ch. App. 617; 36 L. J. (CH.) 864; 16 L. T. 644; 15 W. R. 1002 . . . 156

Peverill Gold Mines, Ltd., *In re*, [1898] 1 Ch. 122; 67 L. J. (CH.) 77; 77 L. T. 505; 46 W. R. 198; 14 T. L. R. 86; 4 Manson, 398, C. A. 123

Piccadilly Hotel, *Re*, [1911] 2 Ch. 534; 81 L. J. (CH.) 89; 104 L. T. 775; 56 Sol. Jo. 52; 19 Manson, 85 172

Piercy *v.* Mills (S.) & Co., [1920] 1 Ch. 77; 88 L. J. (CH.) 509; 122 L. T. 20; 35 T. L. R. 703; 64 Sol. Jo. 35 200

Pitkin (James) & Co., Ltd., *Re*, [1916] W. N. 112; 85 L. J. (CH.) 318; 114 L. T. 673; 60 Sol. Jo. 369 92

Pool *v.* Guardian Investment Trust Co., [1922] 1 K. B. 347; 91 L. J. (K. B.) 242; 126 L. T. 540; 38 T. L. R. 177; 8 Tax Cas. 167 151

Poole *v.* National Bank of China, Ltd., [1907] A. C. 229; 76 L. J. (CH.) 458; 96 L. T. 889; 23 T. L. R. 567; 51 Sol. Jo. 513; 14 Manson, 218 138

Portsmouth, etc., Co., *In re*, [1908] W. N. 203 142

Pound (Henry), Son & Hutchins, *Re* (1889), 42 Ch. D. 402; 58 L. J. (CH.) 792; 62 L. T. 137; 38 W. R. 18; 1 Meg. 363, C. A. . 188

Powell *v.* London and Provincial Bank, [1893] 2 Ch. 555; 62 L. J. (CH.) 795; 69 L. T. 421; 41 W. R. 545; 2 R. 482, C. A. . 110

Premier Underwriting Association, *Re*, [1913] 2 Ch. 29; 82 L. J. (CH.) 383; 108 L. T. 824; 57 Sol. Jo. 594; 20 Manson, 189 . 247

Pretoria Pietersburg Rail. Co., *In re*, [1904] 2 Ch. 170; 73 L. J. (CH.) 551; 91 L. T. 274; 53 W. R. 41; 20 T. L. R. 591; 11 Manson, 318, C. A. 262

Professional, etc., Building Society, *Re* (1871), 6 Ch. App. 856; 25 L. T. 397; 19 W. R. 1153 255

Property Insurance Co., *In re*, [1914] 1 Ch. 775; 83 L. J. (CH.) 525; 110 L. T. 973; 58 Sol. Jo. 472 290

Puddephatt *v.* Leith, [1916] 1 Ch. 200; 85 L. J. (CH.) 185; 114 L. T. 454; 32 T. L. R. 228; 60 Sol. Jo. 210 224

Pulbrook *v.* Richmond Consolidated Co. (1878), 9 Ch. D. 610; 48 L. J. (CH.) 65; 27 W. R. 377 206

PAGE

Pulsford *v.* Devenish, [1903] 2 Ch. 625 ; 73 L. J. (CH.) 35 ; 52 W. R. 73 ; 19 T. L. R. 688 ; 11 Manson, 393 . . . 271, 299
Punt *v.* Symons & Co., Ltd., [1903] 2 Ch. 506 ; 72 L. J. (CH.) 768 ; 89 L. T. 525 ; 52 W. R. 41 ; 10 Manson, 415 . 49, 51, 200
Pyle Works (No. 2), *Re*, [1891] 1 Ch. 173 ; 60 L. J. (CH.) 114 ; 63 L. T. 628 ; 39 W. R. 235 ; 2 Meg. 327 211

Q.

Quartermaine's Case, [1892] 1 Ch. 639 ; 61 L. J. (CH.) 273 ; 66 L. T. 19 ; 40 W. R. 298 185
Quartz Hill Gold Mining Co. *v.* Eyre (1883), 11 Q. B. D. 674 ; 52 L. J. (Q. B.) 488 ; 49 L. T. 249 ; 31 W. R. 668, C. A. . . 260
Quebrada Copper Co., *Re* (1888), 40 Ch. D. 363 ; 58 L. J. (CH.) 332 ; 60 L. T. 482 ; 1 Meg. 122 140

R.

R. *v.* Arnaud (1846), 9 Q. B. 806 ; 16 L. J. (Q. B.) 50 ; 11 Jur. 279 29
— *v.* Companies Registrar, [1912] 3 K. B. 23 ; 81 L. J. (K. B.) 914 ; 107 L. T. 62 ; 28 T. L. R. 457 ; 19 Manson, 280 . . . 19
Ramel Syndicate, Ltd., *Re*, [1911] 1 Ch. 749 ; 80 L. J. (CH.) 455 ; 104 L. T. 842 ; 18 Manson, 297 132
Ramsgate Hotel Co. *v.* Montefiore (1866), L. R. 1 Ex. 109 ; 4 H. & C. 164 ; 35 L. J. (EX.) 90 ; 13 L. T. 715; 12 Jur (N.S.) 455 ; 14 W. R. 335 102
Randt Gold Co. *v.* Wainwright, [1901] 1 Ch. 184 ; 70 L. J. (CH.) 90 ; 84 L. T. 348 ; 17 T. L. R. 29 ; 8 Manson, 61 . . 122
Rearden *v.* Provincial Bank, [1896] 1 I. R. 532 ; 30 I. L. T. 117, C. A. 95
Reese River Silver Co., *Re* (1867), 2 Ch. App. 604. . . . 63
Regent's Canal Co., *Re* (1876), 3 Ch. D. 43 ; 45 L. J. (CH.) 620 ; 35 L. T. 288 ; 24 W. R. 687, C. A. 182
Reigate *v.* Union Co., [1918] 1 K. B. 592 ; 87 L. J. (K. B.) 724 ; 118 L. T. 479, C. A. 289
Renshaw & Co., *In re*, [1908] W. N. 210 181
Rhodesia Goldfields, Ltd., *In re*, [1910] 1 Ch. 239 ; 79 L. J. (CH.) 133 ; 102 L. T. 126 ; 54 Sol. Jo. 135 ; 17 Manson, 23 . . 169
Robinson Printing Co. *v.* Chic, Ltd., [1905] 2 Ch. 123 ; 74 L. J. (CH.) 399 ; 93 L. T. 262 ; 53 W. R. 681 ; 21 T. L. R. 446 ; 12 Manson, 314 188
Robson *v.* Premier Oil Co., [1915] 2 Ch. 124 ; 84 L. J. (CH.) 629 ; 113 L. T. 523 ; 31 T. L. R. 420 ; 59 Sol. Jo. 475, C. A. 225
——— *v.* Smith, [1895] 2 Ch. 118 ; 64 L. J. (CH.) 457 ; 72 L. T. 559 ; 43 W. R. 632 ; 2 Manson, 422 ; 13 R. 529 . . . 166
Rogers' Case (1868), 3 Ch. App. 633 ; 18 L. T. 779 ; 16 W. R. 556, 881. 102

PAGE

Rose & Co. *v.* Gardden Lodge Co. (1878), 3 Q. B. D. 235 ; 47 L. J. (Q. B.) 338 ; 38 L. T. 101 ; 26 W. R. 353 285
Roundwood Colliery Co., *In re*, [1897] 1 Ch. 373 ; 66 L. J. (CH.) 186 ; 75 L. T. 641 ; 45 W. R. 324, C. A. 166
Roussell *v.* Burnham, [1909] 1 Ch. 127 ; 78 L. J. (CH.) 94 ; 100 L. T. 39 ; 25 T. L. R. 61 ; 16 Manson, 30 . . . . 72, 79
Routledge (George) & Sons, Ltd., *Re*, [1904] 2 Ch. 474 ; 73 L. J. (CH.) 843 ; 91 L. T. 288 ; 53 W. R. 44 ; 11 Manson, 404. . 181
Rowell *v.* Rowell (J.) & Sons, Ltd., [1912] 2 Ch. 609 ; 81 L. J. (CH.) 759 ; 107 L. T. 374 ; 56 Sol. Jo. 704 ; 19 Manson, 371 . . 125
Royal British Bank *v.* Turquand (1856), 6 E. & B. 327 ; 25 L. J. (Q. B.) 317 ; 2 Jur. (N.S.) 663 52
Rubber and Produce Trust, *Re*, [1915] 1 Ch. 382 ; 84 L. J. (CH.) 534 ; 112 L. T. 1129 ; 31 T. L. R. 253 ; [1915] H. B. R. 120 . 309
Ruben *v.* Great Fingall Consolidated, [1906] A. C. 439 ; 75 L. J. (K. B.) 843 ; 95 L. T. 214 ; 22 T. L. R. 712 ; 13 Manson, 248 . 105
Russian Petroleum, etc., Co., *In re*, [1907] 2 Ch. 540 ; 77 L. J. (CH.) 21 ; 97 L. T. 564 ; 23 T. L. R. 746 ; 52 Sol. Jo. 718 ; 14 Manson, 318, C. A. 182
——— Spratts Patent, Ltd., *Re*, [1898] 2 Ch. 149 ; 67 L. J. (CH.) 381 ; 78 L. T. 480 ; 46 W. R. 514, C. A. 155

S.

Sadgrove *v.* Bryden, [1907] 1 Ch. 318 ; 76 L. J. (CH.) 184 ; 96 L. T. 361 ; 23 T. L. R. 255 ; 51 Sol. Jo. 210 ; 14 Manson, 47 . 225
Sadler *v.* Worley, [1894] 2 Ch. 170 ; 63 L. J. (CH.) 551 ; 70 L. T. 494 ; 42 W. R. 476 ; 8 R. 194 184
Salmon *v.* Quin & Axtens, Ltd., [1909] 1 Ch. 311 ; 78 L. J. (CH.) 367 ; 100 L. T. 161 ; 25 T. L. R. 164 ; 53 Sol. Jo. 150 ; 16 Manson, 127, C. A. 211
Salomon *v.* Salomon & Co., Ltd., [1897] A. C. 22 ; 66 L. J. Ch. 35 ; 75 L. T. 426 ; 45 W. R. 193 ; 4 Manson, 89 . . 6, 243
Salt (Thomas) & Co., *In re*, [1908] W. N. 63 ; 98 L. T. 558 283, 286
Salton *v.* New Beeston Co., [1899] 1 Ch. 775 ; 68 L. J. (CH.) 370 ; 80 L. T. 521 ; 47 W. R. 462 ; 6 Manson, 238 . . . 84
Sandwell Park Colliery, *In re*, [1914] 1 Ch. 589 ; 83 L. J. (CH.) 549 ; 110 L. T. 766 ; 58 Sol. Jo. 432 ; 21 Manson, 212 . . . 319
Saunders (T. H.) & Co., Ltd., *In re*, [1908] 1 Ch. 415 ; 77 L. J. (CH.) 289 ; 98 L. T. 533 ; 24 T. L. R. 263 ; 52 Sol. Jo. 225 ; 15 Manson, 142 96
Schweppes, Ltd., *Re*, [1914] 1 Ch. 322 ; 83 L. J. (CH.) 296 ; 110 L. T. 246 ; 30 T. L. R. 201 ; 58 Sol. Jo. 185 ; 21 Manson, 82, C. A. 137
Securities Investment Corporation *v.* Brighton Alhambra (1893). 62 L. J. (CH.) 566 ; 68 L. T. 249 ; 3 R. 302 193
Severn and Wye Rail. Co., *Re*, [1896] 1 Ch. 559 ; 65 L. J. (CH.) 400 ; 74 L. T. 219 ; 44 W. R. 347 ; 3 Manson, 94 144

PAGE
Sharpe, *Re*, Masonic Co. *v.* Sharpe, [1892] 1 Ch. 154; 61 L. J. (CH.) 193; 65 L. T. 806; 40 W. R. 241, C. A. . . . 144, 214
Shepheard *v.* Bray, [1906] 2 Ch. 235; 75 L. J. (CH.) 633; 95 L. T. 414; 54 W. R. 556; 22 T. L. R. 625; 50 Sol. Jo. 526; 13 Manson, 279; [1907] 2 Ch. 571; 76 L. J. (CH.) 692; 97 L. T. 729; 24 T. L. R. 17; 14 Manson, 310, C. A. . . . 217
Shepheard *v.* Broome, [1904] A. C. 342; 73 L. J. (CH.) 608; 91 L. T. 178; 53 W. R. 111; 20 T. L. R. 540; 11 Manson, 283 . 63
Sherwell *v.* Combined Incandescent, etc., Syndicate, Ltd., [1907] W. N. 110; 23 T. L. R. 482; 51 Sol. Jo. 446 . . . 244
Shewell's Case, *In re* Mexican and South American Co. (1867), 2 Ch. App. 387; 36 L. J. (CH.) 353; 16 L. T. 194; 15 W. R. 541 280
Shirreff's Case. *See* Imperial Wine Co., *Re*, Shirreff's Case.
Shropshire Union Railways and Canal Co. *v.* R. (1875), L. R. 7 H. L. 496; 45 L. J. (Q. B.) 31; 32 L. T. 283; 23 W. R. 709 . 105
Shuttleworth *v.* Cox Brothers & Co. (Maidenhead), Ltd., [1927] 2 K. B. 9; 96 L. J. (K. B.) 104; 136 L. T. 337; 43 T. L. R. 83, C. A. 50
Sidebottom *v.* Kershaw, Leese & Co., [1920] 1 Ch. 154; 89 L. J. (CH.) 113; 122 L. T. 325; 36 T. L. R. 45; 64 Sol. Jo. 114, C. A. 51
Silkstone Fall Colliery Co., *In re* (1875), 1 Ch. D. 38; 34 L. T. 46, C. A. 267
Simmer & Jack East, Ltd., *Re*, [1913] W. N. 41; 82 L. J. (CH.) 214; 108 L. T. 488; 57 Sol. Jo. 358; 20 Manson, 142 . . 185
Simpson *v.* Molsons' Bank, [1895] A. C. 270; 64 L. J. (P. C.) 51; 11 R. 427 95
Slogger Automatic Co., *In re*, [1915] 1 Ch. 478; 84 L. J. (CH.) 587; 112 L. T. 579; 59 Sol. Jo. 272; [1915] H. B. R. 138 . . 188
Smedley *v.* Companies Registrar, [1919] 1 K. B. 97; 88 L. J. (K. B.) 345; 120 L. T. 277; 83 J. P. 18; 35 T. L. R. 92; 26 Cox, C. C. 371. 220
Smith *v.* Anderson (1880), 15 Ch. D. 247; 50 L. J. (CH.) 39; 43 L. T. 329; 29 W. R. 21, C. A. 201
——— *v.* Paringa Mines, [1906] 2 Ch. 193; 75 L. J. (CH.) 702; 94 L. T. 571; 13 Manson, 316 . . . . . 213, 222
Smyth *v.* Darley (1849), 2 H. L. Cas. 789 221
Sneath *v.* Valley Gold Co., [1893] 1 Ch. 477; 68 L. T. 602; 9 T. L. R. 137; 2 R. 292, C. A. 171
Société Générale *v.* Walker (1885), 11 App. Cas. 20; 55 L. J. (Q. B.) 169; 54 L. T. 389; 34 W. R. 662 . . . . . 97, 169
Société Panhard et Levassor *v.* Panhard Levassor Motor Co., Ltd., [1901] 2 Ch. 513; 70 L. J. (CH.) 738; 85 L. T. 20; 50 W. R. 74; 17 T. L. R. 680; 18 R. P. C. 405 19
South African Territories, Ltd. *v.* Wallington, [1898] A. C. 309; 67 L. J. (Q. B.) 470; 78 L. T. 426; 46 W. R. 545; 14 T. L. R. 298 183
South of England Gas Co., *Re*, [1911] 1 Ch. 573; 80 L. J. (CH.) 358; 104 L. T. 378; 55 Sol. Jo. 442; 18 Manson, 241 66, 68, 244
South Rhondda Colliery Co. (1898), Ltd., *Re*, [1928] W. N. 126 . 166

PAGE

Southern Brazilian, etc., Co., *Re*, [1905] 2 Ch. 78; 74 L. J. (CH.) 392; 92 L. T. 598; 53 W. R. 489; 21 T. L. R. 451; 12 Manson, 323 163

Spackman *v.* Evans (1868), L. R. 3 H. L. 171; 37 L. J. (CH.) 752; 19 L. T. 151 241

Spanish Prospecting Co., Ltd., *Re*, [1911] 1 Ch. 92; 80 L. J. (CH.) 210; 103 L. T. 609; 27 T. L. R. 76; 55 Sol. Jo. 63; 18 Manson, 191, C. A. 144, 148

Sparks *v.* Liverpool Waterworks Co. (1807), 13 Ves. 428 . . 123

Spencer *v.* Kennedy, [1926] Ch. 125; 95 L. J. (CH.) 240; 134 L. T. 591. 225

Spiral Globe, Ltd., *In re*, [1902] 1 Ch. 396; 71 L. J. (CH.) 128; 85 L. T. 778; 50 W. R. 187; 18 T. L. R. 154; 9 Manson, 52 179

———, *Re* (No. 2), [1902] 2 Ch. 209; 71 L. J. (CH.) 538; 86 L. T. 499; 18 T. L. R. 532 177

Spottiswoode, Dixon & Hunting, Ltd., *Re*, [1912] 1 Ch. 410; 81 L. J. (CH.) 446; 106 L. T. 23; 28 T. L. R. 214; 56 Sol. Jo. 272; 19 Manson, 240 264

Springbok Agricultural Estates, Ltd., *Re*, [1920] 1 Ch. 563; 89 L. J. (CH.) 362; 123 L. T. 322; 64 Sol. Jo. 359; [1920] B. & C. R. 107. 133

Stacey (F.) & Co. *v.* Wallis (1912), 106 L. T. 544; 28 T. L. R. 209 18

Standard Manufacturing Co., *In re*, [1891] 1 Ch. 627; 60 L. J. (CH.) 292; 64 L. T. 487; 39 W. R. 369; 2 Meg. 418 . . . 174

Stanfield *v.* Gibbon, [1925] W. N. 11; 60 L. Jo. 54; 159 L. T. Jo. 29 191

Stanley's Case. *See* British Provident, etc., Assurance Society, *Re*, Stanley's Case.

Stanton (F. & E.), Ltd., *Re*, [1929] 1 Ch. 180; 98 L. J. (CH.) 133 . 288

Staples *v.* Eastman Photo Co., [1896] 2 Ch. 303; 65 L. J. (CH.) 682; 74 L. T. 459, C. A. 131

Stapley *v.* Read Brothers, [1924] 2 Ch. 1; 93 L. J. (CH.) 513; 131 L. T. 629; 40 T. L. R. 442; 68 Sol. Jo. 519. . . . 147

Stark, *Ex parte*. *See* Consort Deep Level Gold Mines, Ltd., *Re*, *Ex parte* Stark.

Steel Wing Co., *Re*, [1921] 1 Ch. 349; 90 L. J. (CH.) 116; 124 L. T. 664; 65 Sol. Jo. 240; [1920] B. & C. R. 160. . . 258

Steinberg *v.* Scala (Leeds), Ltd., [1923] 2 Ch. 452; 92 L. J. (K. B.) 944; 129 L. T. 624; 39 T. L. R. 542; 67 Sol. Jo. 656, C. A. 87

Stephens *v.* Mysore Reefs, Ltd., [1902] 1 Ch. 745; 71 L. J. (CH.) 295; 86 L. T. 221; 50 W. R. 509; 18 T. L. R. 327; 9 Manson, 199 . . . . . 24, 25

Stewart Carburettor Co., *Re*, [1912] W. N. 100; 28 T. L. R. 335; 56 Sol. Jo. 413 138

Stocks (Joseph), Ltd., *Re*, [1912] 2 Ch. 134, n.; 26 T. L. R. 41; 54 Sol. Jo. 31 163

Stockton Malleable Iron Co., *In re* (1875), 2 Ch. D. 101; 45 L. J. (CH.) 168 127

PAGE
Streatham Estates Co., *In re*, [1897] 1 Ch. 15 ; 66 L. J. (CH.) 57 ; 75 L. T. 574 ; 45 W. R. 105 ; 13 T. L. R. 59 ; 41 Sol. Jo. 80 . 154
Stubbs *v.* Slater, [1910] 1 Ch. 632 ; 79 L. J. (CH.) 420 ; 102 L. T. 444, C. A. 109
——— (Joshua), Ltd., *Re*, [1891] 1 Ch. 475 ; 60 L. J. (CH.) 190 ; 64 L. T. 306 ; 39 W. R. 617, C. A. 188
Suburban Hotel Co., *Re* (1867), 2 Ch. App. 737 ; 36 L. J. (CH.) 710 ; 17 L. T. 22 ; 15 W. R. 1096 252
Suffield *v.* Inland Revenue Commissioners, [1908] 1 K. B. 865 ; 77 L. J. (K. B.) 746 ; 98 L. T. 405 ; 24 T. L. R. 371 ; 15 Manson, 233 171
Sunlight Incandescent Co., *In re*, [1900] 2 Ch. 728 ; 69 L. J. (CH.) 873 ; 83 L. T. 406 310
Sussex Brick Co., *Re*, [1904] 1 Ch. 598 ; 73 L. J. (CH.) 308 ; 90 L. T. 426 ; 52 W. R. 371 ; 11 Manson, 66, C. A. . . . 107
Sutton *v.* English and Colonial Co., [1902] 2 Ch. 502 ; 71 L. J. (CH.) 685 ; 87 L. T. 438 ; 50 W. R. 571 ; 18 T. L. R. 647 ; 10 Manson, 101 206
Swan Brewery Co., Ltd. *v.* R., [1914] A. C. 231 ; 83 L. J. (P. C.) 134 ; 110 L. T. 211 ; 30 T. L. R. 199 150
Swayne *v.* Fawkener (1696), Show. Parl. Cas. 207 . . . 103
Sykes' Case, *In re* European, etc., Co. (1872), L. R. 13 Eq. 255 ; 41 L. J. (CH.) 251 ; 26 L. T. 92 120

T.

Taurine Co., *In re* (1883), 25 Ch. D. 118 ; 53 L. J. (CH.) 271 ; 49 L. T. 514 ; 32 W. R. 129, C. A. 114
Taylor's Agreement Trusts, *In re*, [1904] 2 Ch. 737 ; 73 L. J. (CH.) 557 ; 52 W. R. 602 ; 21 R. P. C. 722 . . . 264
——— Case, [1897] 1 Ch. 298 ; 66 L. J. (CH.) 222 ; 76 L. T. 1 ; 45 W. R. 401 ; 13 T. L. R. 179 ; 4 Manson, 59, C. A. . . 268
Tea Corporation, Ltd., *In re*, [1904] 1 Ch. 12 ; 73 L. J. (CH.) 57 ; 89 L. T. 516 ; 52 W. R. 177 ; 20 T. L. R. 57 ; 11 Manson, 34, C. A. 274
Teede & Bishop, Ltd., *Re*, [1901] W. N. 52 ; 70 L. J. (CH.) 409 ; 84 L. T. 561 ; 17 T. L. R. 282 ; 8 Manson, 217 . . . 228
Tewkesbury Gas Co., *Re*, [1911] 2 Ch. 279 ; 80 L. J. (CH.) 590 ; 105 L. T. 300 ; 27 T. L. R. 511 ; 55 Sol. Jo. 616 ; 18 Manson, 301 ; affirmed, [1912] 1 Ch. 1 ; 80 L. J. (CH.) 723 ; 105 L. T. 569 ; 28 T. L. R. 40 ; 56 Sol. Jo. 71 ; 18 Manson, 395, C. A. . . 162
Thairlwall *v.* Great Northern Rail. Co., [1910] 2 K. B. 509 ; 79 L. J. (K. B.) 924 ; 103 L. T. 186 ; 26 T. L. R. 555 ; 54 Sol. Jo. 652 ; 17 Manson, 247 144
Thames Ironworks, Ltd., *Re*, [1912] W. N. 66 ; 106 L. T. 674 ; 28 T. L. R. 273 ; 56 Sol. Jo. 413 189
Thorne (H. E.) & Son, Ltd., *Re*, [1914] 2 Ch. 438 ; 84 L. J. (CH.) 161 ; 112 L. T. 30 ; 58 Sol. Jo. 755 ; [1915] H. B. R. 19. . 286

PAGE

Tiessen *v.* Henderson, [1899] 1 Ch. 861; 68 L. J. (CH.) 353; 80 L. T. 483; 47 W. R. 459; 6 Manson, 340 222
Tilt Cove Copper Co., *Re*, [1913] 2 Ch. 388; 82 L. J. (CH.) 685; 109 L. T. 138; 57 Sol. Jo. 773; 20 Manson, 288 . . 149, 190
Timmins (Ebenezer) & Sons, Ltd., *Re*, [1902] 1 Ch. 388; 71 L. J. (CH.) 121; 50 W. R. 134; 18 T. L. R. 125; 46 Sol. Jo. 104; 9 Manson, 47 85
Towers *v.* African Tug Co., [1904] 1 Ch. 558; 73 L. J. (CH.) 395; 90 L. T. 298; 52 W. R. 532; 20 T. L. R. 292; 48 Sol. Jo. 311; 11 Manson, 198, C. A. 148
Trade Auxiliary Co. *v.* Vickers (1873), L. R. 16 Eq. 303; 21 W. R. 836 191
Transvaal Lands Co. *v.* New Belgium (Transvaal Land & Development Co., [1914] 2 Ch. 488; 84 L. J. (CH.) 94; 112 L. T. 967; 31 T. L. R. 1; 59 Sol. Jo. 27, C. A. 212
Trench Tubeless Tyre Co., *Re*, [1900] 1 Ch. 408; 69 L. J. (CH.) 213; 82 L. T. 247; 48 W. R. 310; 16 T. L. R. 207; 44 Sol. Jo. 260; 8 Manson, 85, C. A. 310
Trevor *v.* Whitworth (1887), 12 App. Cas. 409; 57 L. J. (CH.) 28; 57 L. T. 457; 36 W. R. 145; 3 T. L. R. 745; 32 Sol. Jo. 201, H. L. 126
Truman, Hanbury & Co., *Re*, [1910] 2 Ch. 498; 79 L. J. (CH.) 740; 103 L. T. 553 140
Trust Co. of Australasia, *In re*, [1908] W. N. 229; 25 T. L. R. 61; 53 Sol. Jo. 48 26
Tufnell's Case (1883), 29 Ch. D. 421; 52 L. T. 953; 1 T. L. R. 221, C. A. 85
Tussaud (Madame) & Sons, Ltd., *Re*, [1927] 1 Ch. 657; 96 L. J. Ch. 328; 137 L. T. 516; 43 T. L. R. 289; [1927] B. & C. R. 112 132
Twyeross *v.* Grant (1877), 2 C. P. D. 469; 46 L. J. (Q. B.) 636; 36 L. T. 812; 25 W. R. 701, C. A. 60

U.

Underhay *v.* Read (1887), 20 Q. B. D. 209; 57 L. J. (Q. B.) 129; 58 L. T. 457; 36 W. R. 298, C. A. 187
Union Bank of Kingston-upon-Hull, *In re* (1880), 13 Ch. D. 808 31
United Provident Co., *Re*, [1910] 2 Ch. 477; 79 L. J. (CH.) 839; 103 L. T. 531; [1911] W. N. 40; 45 L. J. (N. C.) 108 13
Uruguay Central Rail. Co., *In re* (1879), 11 Ch. D. 372; 48 L. J. (CH.) 540; 41 L. T. 267; 27 W. R. 571 238

V.

Valletort Steam Laundry Co., *In re*, [1903] 2 Ch. 654; 72 L. J. (CH.) 674; 89 L. T. 60; 19 T. L. R. 593 168
Van den Hurk *v.* Martens (R.) & Co., Ltd., [1920] 1 K. B. 850; 89 L. J. (K. B.) 545; 123 L. T. 110; 25 Com. Cas. 170 . . . 292

PAGE
Varieties, Ltd., *In re*, [1893] 2 Ch. 235; 62 L. J. (CH.) 526; 68 L. T. 214; 41 W. R. 296; 9 T. L. R. 259; 37 Sol. Jo. 250; 3 R. 324 255
Venner's Electrical Cooking & Heating Appliances, Ltd. *v.* Thorpe, [1915] 2 Ch. 404; 84 L. J. (CH.) 925; 113 L. T. 1137; 60 Sol. Jo. 27; [1915] H. B. R. 201, C. A. 291
Verner *v.* General Commercial Trust, [1894] 2 Ch. 239; 63 L. J. (CH.) 456; 70 L. T. 516; 10 T. L. R. 393; 38 Sol. Jo. 384; 1 Manson, 136; 7 R. 170, C. A. 146, 147
Vic Mill Co., Ltd., *Re*, [1913] 1 Ch. 465; 82 L. J. (CH.) 251; 108 L. T. 444; 57 Sol. Jo. 404, C. A. 285
Victoria Society, *Re*, [1913] 1 Ch. 167; 82 L. J. (CH.) 176; 107 L. T. 755; 29 T. L. R. 94; 20 Manson, 76 260
Victoria Steam Boats, *In re*, [1897] 1 Ch. 158; 66 L. J. (CH.) 21; 75 L. T. 374; 45 W. R. 135 192
Victors, Ltd. *v.* Lingard, [1927] 1 Ch. 323; 96 L. J. (CH.) 132; 136 L. T. 476; 70 Sol. Jo. 1197. 212
Viola *v.* Anglo-American Co., [1912] 2 Ch. 305; 81 L. J. (CH.) 581; 107 L. T. 118; 19 Manson, 287 189

W.

Wakefield Rolling Stock Co., *In re*, [1892] 3 Ch. 165; 61 L. J. (CH.) 670; 67 L. T. 83; 40 W. R. 700; 8 T. L. R. 660; 36 Sol. Jo. 524 . . . . . 281, 298
Walker & Smith, Ltd., *In re* (1903), 72 L. J. (CH.) 572; 88 L. T. 792; 51 W. R. 491; 19 T. L. R. 429; 10 Manson, 333 . . 58
Wall *v.* London and Northern Assets Corporation (1898), 14 T. L. R. 496; affirmed, [1898] 2 Ch. 469; 67 L. J. (CH.) 596; 79 L. T. 249; 47 W. R. 219; 14 T. L. R. 547, C. A. 223
Wallace *v.* Universal Automatic Machines Co., [1894] 2 Ch. 547; 63 L. J. (CH.) 598; 70 L. T. 852; 10 T. L. R. 501; 1 Manson, 315; 7 R. 316, C. A. 185
Wallscourt's (Lord) Case. *See* Companies Guardian Society, *Re*, Wallscourt's (Lord) Case.
Warner International Co. *v.* Kilburn, [1914] W. N. 61; 84 L. J. (K. B.) 365; 110 L. T. 456; 30 T. L. R. 284, C. A. . . 197
Watson & Sons, *In re*, [1891] 2 Ch. 55; 60 L. J. (CH.) 473; 65 L. T. 170; 39 W. R. 633; 7 T. L. R. 356 275
Watts *v.* Bucknall, [1903] 1 Ch. 766; 72 L. J. (CH.) 447; 88 L. T. 845; 51 W. R. 433; 19 T. L. R. 320; 47 Sol. Jo. 367; 10 Manson, 176, C. A. 78
Weeks *v.* Propert (1873), L. R. 8 C. P. 427; 42 L. J. (C. P.) 129; 21 W. R. 676 . . . . . 153, 201
Welsbach Incandescent Co., *In re*, [1904] 1 Ch. 87; 73 L. J. (CH.) 104; 89 L. T. 645; 52 W. R. 327; 20 T. L. R. 122; 11 Manson, 47, C. A. 130, 139

PAGE
Welton *v.* Saffery, [1897] A. C. 299; 66 L. J. (CH.) 362; 76 L. T. 505; 45 W. R. 508; 13 T. L. R. 340; 41 Sol. Jo. 437; 4 Manson, 269 . . . . . 132, 280
Wenborn & Co., *In re*, [1905] 1 Ch. 413; 74 L. J. (CH.) 283; 92 L. T. 228; 53 W. R. 332; 21 T. L. R. 229; 12 Manson, 45 285, 292
Wenlock (Baroness) *v.* River Dee Co. (1883), 36 Ch. D. 675, n.; 57 L. T. 402, n., C. A.; affirmed (1885), 10 App. Cas. 354; 54 L. J. (Q. B.) 577; 53 L. T. 62; 49 J. P. 773 8
West Coast Gold Fields, Ltd., *In re*, [1906] 1 Ch. 1; 75 L. J. (CH.) 23; 93 L. T. 609; 54 W. R. 116; 22 T. L. R. 39; 12 Manson, 414, C. A. 115
—— Yorkshire Darracq Agency, Ltd. *v.* Coleridge, [1911] 2 K. B. 326; 80 L. J. (K. B.) 1122; 105 L. T. 215; 18 Manson, 307 . 210
Westbury *v.* Twigg, [1892] 1 Q. B. 77; 61 L. J. (Q. B.) 32; 66 L. T. 225; 40 W. R. 208 292
Western Counties Bakeries Co., *In re*, [1897] 1 Ch. 617; 66 L. J. (CH.) 354; 76 L. T. 239; 45 W. R. 418; 13 T. L. R. 276; 41 Sol. Jo. 365, C. A. 240
Westminster Syndicate, Ltd., *In re*, [1908] W. N. 236; 99 L. T. 924; 25 T. L. R. 95. 155
Whaley Bridge Co. *v.* Green (1879), 5 Q. B. D. 109; 49 L. J. (Q. B.) 326; 41 L. T. 674; 28 W. R. 351 60
White, *Re*, [1913] 1 Ch. 231; 82 L. J. (CH.) 149; 108 L. T. 319; 57 Sol. Jo. 212 243
Whitechurch (George), Ltd. *v.* Cavanagh, [1902] A. C. 117; 71 L. J. (K. B.) 400; 85 L. T. 349; 50 W. R. 218; 17 T. L. R. 746; 9 Manson, 351. 112
Wilkinson Sword Co., *Re*, [1913] W. N. 27; 29 T. L. R. 242; 57 Sol. Jo. 340 85
Will *v.* United Lankat Co., Ltd., [1914] A. C. 11; 83 L. J. (CH.) 195; 109 L. T. 754; 30 T. L. R. 37; 58 Sol. Jo. 291; 21 Manson, 24 131
Willis, *Re*, [1911] 2 Ch. 563; 81 L. J. (CH.) 8; 105 L. T. 295; 55 Sol. Jo. 598. 135
Wilson *v.* Kelland, [1910] 2 Ch. 306; 79 L. J. (CH.) 580; 103 L. T. 17; 26 T. L. R. 485; 54 Sol. Jo. 542; 17 Manson, 233 . 167, 168
Wimbledon Olympia, Ltd., *In re*, [1910] 1 Ch. 630; 79 L. J. (CH.) 481; 102 L. T. 425; 17 Manson, 220 77
Windsor Steam Coal Co. (1901), Ltd., *Re*, [1928] Ch. 609; 97 L. J. (Ch.) 238; [1928] B. & C. R. 36; affirmed, [1929] 1 Ch. 151; 140 L. T. 80, C. A. 299
Wise *v.* Lansdell, [1921] 1 Ch. 420; 90 L. J. (CH.) 178; 124 L. T. 502; 37 T. L. R. 167; [1920] B. & C. R. 145 . . 223
—— *v.* Perpetual Trustees Co., [1903] A. C. 139; 72 L. J. (P. C.) 31; 87 L. T. 569; 51 W. R. 241; 19 T. L. R. 125 . . . 96
Wood Green Laundry Co., Ltd., *Re*, [1918] 1 Ch. 423; 87 L. J. (CH.) 171; 118 L. T. 501; 62 Sol. Jo. 349 192
Woods *v.* Winskill, [1913] 2 Ch. 303; 82 L. J. (CH.) 447; 109 L. T. 399; 57 Sol. Jo. 740; 6 B. W. C. C. 934; 20 Manson, 261 191
World Industrial Bank, Ltd., *In re*, [1909] W. N. 148 . . . 259

PAGE
Wragg, Ltd., *In re*, [1897] 1 Ch. 796; 66 L. J. (CH.) 419; 76 L. T. 397; 45 W. R. 557; 4 Manson, 179, C. A. 92
Wreck Recovery Co., *In re* (1880), 15 Ch. D. 353; 43 L. T. 190; 29 W. R. 266, C. A. 296
Wrexham, Mold, etc., Rail. Co., *In re*, [1899] 1 Ch. 440; 68 L. J. (CH.) 270; 80 L. T. 130; 47 W. R. 464; 15 T. L. R. 209; 43 Sol. Jo. 277; 6 Manson, 218, C. A. 154
Wright *v.* Horton (1887), 12 App. Cas. 371; 56 L. J. (CH.) 873; 56 L. T. 782; 52 J. P. 179; 36 W. R. 17 156

X.

X. Co., *In re*, [1907] 2 Ch. 92; 76 L. J. (CH.) 529; 97 L. T. 50; 14 Manson, 227 298

Y.

Yenidje Tobacco Co., *Re*, [1916] 2 Ch. 426; 86 L. J. (CH.) 1; 115 L. T. 530; 32 T. L. R. 709; 60 Sol. Jo. 707; [1916] H. B. R. 140, C. A. 252, 253
Yollond, Husson and Birkett, Ltd., *In re*, [1908] 1 Ch. 152; 77 L. J. (CH.) 43; 97 L. T. 824; 14 Manson, 346, C. A. . . . 177
Yorkshire Woolcombers' Association, *In re*, [1903] 2 Ch. 284; 72 L. J. (CH.) 635; 88 L. T. 537; 10 Manson, 276, C. A.; affirmed, *sub nom.* Illingworth *v.* Houldsworth, [1904] A. C. 335; 73 L. J. (CH.) 739; 91 L. T. 602; 55 W. R. 113; 20 T. L. R. 633; 12 Manson, 141 165
Young *v.* Naval, Military, etc., Ltd., [1905] 1 K. B. 687; 74 L. J. (K. B.) 302; 92 L. T. 458; 53 W. R. 447; 21 T. L. R. 293; 12 Manson, 212 209
——— *v.* South African Syndicate, [1896] 2 Ch. 268; 65 L. J. (CH.) 638; 74 L. T. 527; 44 W. R. 509; 40 Sol. Jo. 500 . 222

PRINCIPLES OF COMPANY LAW

CHAPTER I.

INTRODUCTION

By far the most usual and most important form of company is a "Company Limited by Shares under the Companies Act" (*a*). This form of company will be dealt with almost exclusively in this book. Suppose a number of persons intend to combine for the purpose of carrying on some business. If there are only a few of them, they will probably form a partnership; but if their numbers are at all large, and particularly if they wish to limit their individual liability for losses, they will most probably decide to form or "promote" a company limited by shares under the Companies Act. This proceeding is in outline very simple. They must first decide five things. The **object** which the company is to carry out is probably agreed already: there remain the **name** of the company, the **place** where the business is to be carried on, **how far each member undertakes to be responsible for losses** and the **amount of funds** which they consider necessary to

(*a*) The Companies Act, 1929, has consolidated all previous legislation relating to limited companies and will be usually referred to in this book as "the Companies Act."

carry on the business properly. Their decision on these points is embodied in a short document called a Memorandum of Association, which must be signed by at least seven persons (*b*), who must each agree to take one or more shares in the company. The Memorandum so signed is taken to an official at ~~Somerset House~~, called "**The Registrar of Companies,**" a fee is paid, the registrar enters the new company on the register and prepares a certificate of incorporation, and the company is complete.

The **Memorandum of Association** then contains—

1. The name of the company, which may be almost anything, provided it ends with the word "Limited";
2. The situation of the registered office of the company;
3. The objects or powers of the company;
4. How the liability of members is limited; and
5. The amount of the capital of the company.

It is a most important document, for on it the existence of the company and all its powers depend. It fixes the powers and objects of the company as between the company and the outside world—and these powers and objects cannot be altered by the company, even if every member agrees (*c*).

The persons who are to form the company must then arrange how the business is to be carried on. The whole body cannot all manage, and some provision must be made for the division of the profits or losses. All such matters are dealt with in the "**Articles of**

(*b*) Two in case of a private company, see p. 242, *post*.
(*c*) But see p. 25, *post*.

Association." This is a much longer document than the Memorandum, and generally provides for the appointment of **directors** (or managers of the business for the company), for division of the capital into **shares,** stating how these are to be allotted among the members, that **share certificates** shall be given to the members as evidence of their right to their shares, and that a **register** of members shall be kept as further evidence. The members generally reserve power to control the acts of the directors in many matters, and this leads to provision for **meetings** of members, for **votes** and the passing of **resolutions** of different kinds (*d*). Thus the whole internal management of the company is dealt with in the **Articles.** They form a binding contract between all the members and the company; but, unlike the Memorandum, the Articles may be changed at any time if a sufficient number of shareholders desire it.

The persons forming the company may not be able to find all the capital necessary for the successful working of the business. If so, they will invite the public to join in the undertaking and subscribe for shares. This is done by means of a **prospectus.**

The **capital** may be of any amount, divided into shares of any amount. It may be £10,000,000 divided into 100,000 shares of £100 each, or £10 divided into 200 shares of 1*s.* each.

Any person who acquires one or more shares becomes a **member,** or, in other words, a **shareholder** or **contributory** of the company, and becomes liable, either

(*d*) Resolutions may be (1) Ordinary; (2) Extraordinary; (3) Special. See pp. 226 to 228.

at once or when called upon, to pay to the company the money which his share represents.

When a company borrows money, it often gives to the lenders a charge or mortgage over its property, and hands to the lenders as evidence of their charge documents called **debentures.**

A company comes to an end by being **wound up**; a **liquidator** is appointed and takes possession of all the property of the company, and, after paying the debts, he distributes it among the members. Debts secured by **debentures** or other charges are, of course, paid before unsecured debts.

CHAPTER II.

THE NATURE OF A LIMITED COMPANY.

BESIDES limited companies registered under the Companies Acts there are several other forms of associations for the purpose of carrying on business.

In this chapter limited companies are contrasted with some of the more important of these forms.

I.—AS CONTRASTED WITH PARTNERSHIP.

Partnership.	Limited Companies.
(a) the "**firm**" is not a distinct "person"; it is made up of the several persons who compose it.	A company is a distinct being or *persona*.
Thus a firm of A. & Co., is in law A. and B. and C. and D., and the property of the firm belongs to all the members in common. Consequently partners cannot make contracts with the firm, and judgment creditors can seize the goods of any partner.	Thus the company S. and Co., Limited, is an entirely different person from Mr. S., even though he started it, and manages it and owns practically all the shares. The property is the property of S. & Co., Limited, and not of Mr. S. He can make contracts with the company, and his goods cannot be seized for the debts of the company.

Salomon v. Salomon & Co., Limited, [1897] A. C. 22.

S. had a boot business. He sold the business to a company which he formed with a capital of £40,000. The necessary seven persons were his wife, daughter, and four sons, who took one £1 share each, and S. himself, who took 20,000 shares.

The price paid by the company to S. was £30,000; but instead of paying him cash, the company gave him 20,000 fully-paid £1 shares and £10,000 in debentures (*i.e.*, he lent the £10,000 which the company owed him for purchase-money to the company on mortgage).

Owing to strikes in the boot trade the company was wound up. The assets of the company amounted to only £6000 out of which to pay the £10,000 due to S. and secured by debentures, and a further £7000 due to unsecured creditors.

The unsecured creditors claimed that as S. & Co. was really the same person as S., he could not owe money to himself and that they should be paid their £7000 first.

VAUGHAN WILLIAMS, J., **held** that the company was a mere agent for S., and he must indemnify his agent against the losses it had sustained, by paying the £7000 himself; but it was **held** by the House of Lords—once the company is incorporated, it must be treated like any other independent person, and the motives of those who promoted it are irrelevant.

The company could not be agent for S., for either—

(1) it was a legal person—then it acted for itself; or

(2) it was not—then it could not be an agent at all.

The company was not defrauded, as all the shareholders knew all about it. **The company is at law a different person altogether from the subscribers to the Memorandum.**

Result.—S. kept the £6000 in part payment of his loan to the company.

This is perhaps the most important case in company law, and every student should read for himself the judgment of Lord MACNAGHTEN on p. 47 of the report.

Partnership.	Limited Companies.
(b) One partner cannot transfer his share without the consent of the others.	Shares are freely transferable.

Partnership—*cont.*	Limited Companies—*cont.*
(c) Each partner is an agent of the firm to make contracts (Partnership Act, 1890, s. 5).	A shareholder is not an agent for the company.
(d) The liability of each partner for the debts of the firm is unlimited, except in case of a limited partnership under the Limited Partnership Act, 1907 (*a*).	The liability of each shareholder may be limited either by shares or by guarantee.
(e) Partners may make what private arrangements they like among themselves.	There are some arrangements between members of a company which are not allowed, *e.g.*, the company cannot buy the shares of the members.

II.—UNINCORPORATED COMPANIES.

These were like very large partnerships; but the shares were made transferable and the management was conducted by a body of directors. They were treated in law as big partnerships, and the liability of members was unlimited.

Such companies can no longer be created, for by the Companies Act no company or partnership of more than ten persons can be formed for the purpose of banking (s. 358), or of more than twenty persons for other business (s. 357), unless it is registered under the Act or incorporated by statute or letters patent.

(*a*) 7 Ed. VII. c. 24. Under this Act a partnership may consist of one or more "general partners" who are all liable for all the debts of the firm, and of one or more limited partners who bring in a specified amount of capital, and are not liable for more than the amount brought in. Such partnerships must be registered, and the limited partners cannot manage the business, or bind the firm.

III.—INCORPORATED COMPANIES.

(A.) Under the Act of 1844.

Owing to the inconvenience of the last-mentioned form of company, this Act allowed companies to be incorporated. The result was that they could sue and hold property in their own names; but the members remained individually liable, and all attempts to limit their liability failed.

(B.) By Royal Charter.

(*e.g.*, Bank of England.)

(a) At common law the members were not liable for the debts of the Corporation (there are now some exceptions).

(b) A corporation has all the powers of an ordinary person and they cannot be modified even by the creating charter. But the Crown may annul the charter if the limit placed on the powers by the charter is disregarded (*Baroness Wenlock* v. *River Dee Co.*, 36 Ch. D. 685 (n)).

Limited Companies.

Members are liable up to the amount of their shares.

The powers of a company depend on its Memorandum of Association (*Ashbury Railway Carriage Co.* v. *Riche* (1875), L. R. 7 H. L. 671). If directors do an act which is not within the Memorandum, the shareholders cannot ratify it.

(C.) By Special Act of Parliament (Statutory Companies).

Railway and other companies which want compulsory powers to take land and commit nuisances

must be incorporated by a special Act of Parliament, *e.g.*, the Southern Railway Company. The provisions of the special Acts required in each case were found to be very similar; consequently several public statutes were enacted containing general provisions, and one or more of these Acts are adopted in each private Act, *e.g.*:

The Companies Clauses Consolidation Act, 1845, defines the liability of shareholders and regulates borrowing powers, granting of certificates, and the constitution of such companies generally.

The Railway Clauses Act, 1845, contains rules for making railways, and deals with deviations, bridges, level crossings, etc.

The Land Clauses Consolidation Act, 1845, as to compulsory purchase of land, notices to be given, how the land is to be conveyed, and the purchase-money paid, etc.

Statutory Companies.	Limited Companies.
(a) The powers are limited by the special Act which creates the company and to which it owes its whole existence.	The powers depend on the Memorandum.
(b) The liability of members is limited as follows: By s. 36 of the Companies Clauses Act, if execution is levied against the company, and there is	Limited by shares.

Statutory Companies.—*cont.*	Limited Companies—*cont.*
not enough to pay the debt, the creditor may issue execution against the shareholders to the extent of their shares (*b*).	
(c) The company can only borrow money when the whole of its capital has been subscribed and at least half actually paid up, and even then can usually only borrow to the extent of one-third of its capital.	The borrowing powers of the company are usually unlimited, but may be limited by the Memorandum.
(d) The company cannot lease its undertaking without the consent of Parliament.	If the Memorandum allows it, the company can lease the whole of its undertaking.

IV.—BUILDING SOCIETIES, INDUSTRIAL, PROVIDENT, AND FRIENDLY SOCIETIES.

Are governed by their own special Acts. They are not companies, but the liability of members is limited.

V.—OTHER COMPANIES UNDER THE COMPANIES ACT.

1. Unlimited companies:

The liability of the members is not limited at all.

(*b*) This used to be done by *scire facias*, but now by application to a judge under O. XLII., r. 23.

These companies are rare, their position is much the same as companies incorporated under the Act of 1844.

2. Companies limited by guarantee:

Each member undertakes to be liable to pay the debts of the company up to a certain amount, but the capital of the company is not usually divided into shares.

Further details of this form of company will be found on p. 247.

Usual Steps in the Formation of a Company

First, prepare the Memorandum of Association (Chapter III.).

Secondly, prepare the Articles of Association (if any), Chapter IV.

Thirdly, prepare the Preliminary Contracts (if any), Chapter V., s. 1.

Fourthly, the Company must be registered (Chapter V., s. 2).

Fifthly, the necessary working capital must be obtained (Chapter VI.).

Specimen Form of Memorandum of Association.

THE COMPANIES (CONSOLIDATION) ACT, 1908.

Company Limited by Shares.

Memorandum of Association of Blank Company, Limited.

1. The name of the company is "Blank Company, Limited."

2. The registered office of the company will be situate in England.

3. The objects for which the company is established are:

(a) To acquire and take over as a going concern the undertaking, and all or any of the assets and liabilities of Jones Brothers, and with a view thereto to adopt the agreement referred to in clause 3 of the company's Articles of Association, and to carry the same into effect with or without modification.

(b) To carry on business as brewers, maltsters, corn merchants, distillers, hop merchants, wine and spirit merchants and importers, manufacturers of aerated and mineral waters and other drinks, licensed victuallers, hotel keepers, beerhouse keepers, restaurant keepers, lodging-house keepers, farmers, dairymen, ice merchants, tobacconists, brick makers, bath keepers, and to buy, sell, manipulate, and deal (both wholesale and retail) in commodities of all kinds which can conveniently

be dealt in by the company in connection with any of its objects and to carry on any other businesses, whether manufacturing or otherwise, capable of being conveniently carried on in connection with any of the company's objects, or calculated directly or indirectly to enhance the value of or render profitable any of the company's property or rights.

* * * * *

(f) To enter into partnership or into any arrangement for sharing profits, union of interest, reciprocal concession, or co-operation with any person or company carrying on or about to carry on any business which this company is authorised to carry on, or any business or transaction capable of being conducted so as directly or indirectly to benefit this company, and to take or otherwise acquire and hold shares or stock in, or securities of, and to subsidise or otherwise assist any such company, and to sell, hold, re-issue with or without guarantee, or otherwise deal with such shares or securities.

* * * * *

(h) To aid in the establishment and support of associations or institutions calculated to benefit persons employed by the company, or having dealings with the company, to provide for the welfare of persons in the employment of the company, or formerly in the employment of the company, and the widows and children of such persons and others dependent on them,

by granting money or pensions, providing schools, reading rooms, places of recreation, or subscribing to sick or benefit clubs, or societies, to subscribe or guarantee money for charitable or benevolent objects, or for any exhibition, and generally for any purpose which may seem likely, whether directly or indirectly, to promote the development of the business of the company, or to prevent its contraction, or for any public, general, or useful object.

(i) To sell the undertaking of the company, or any part thereof, for such consideration as the company may think fit, and in particular wholly or partly for shares, debentures, debenture stock, or securities of any other company, and to accept and take any such shares, stock, debentures, or securities in satisfaction of any money payable to, or any claim of, the company.

* * * * *

(u) To do all such things as are incidental or conducive to the attainment of any of the above-mentioned objects.

4. The liability of the members is limited.

5. The capital of the company is £25,000, divided into 25,000 shares of £1 each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this Memorandum of Association, and we respectively agree to take the number of shares in the capital of the company set opposite to our respective names.

Names, Addresses, and Descriptions of Subscribers.	Number of Shares taken by each Subscriber.
John Jones, of	One.
William Smith, of	One.
Thomas Brown, of	One.
Benjamin Green, of	One.
Andrew Black, of	One.
Arthur Drew, of	One.
John Smith, of	One.

Dated this 20th day of May, 1929.

Witness to all the above written signatures,

GEORGE BROWNE.

CHAPTER III.

MEMORANDUM OF ASSOCIATION.

Before reading this chapter read the form of Memorandum on p. 13, which is a Memorandum of a company actually in existence, but owing to the great length of clause 3, several of the paragraphs have been omitted.

This chapter should be read as explaining the form, clause by clause.

Section 1.

Clause I.—The Name.

Any name may be chosen subject to the following restrictions:

1. The last word of the name must be "limited" (*a*).
2. The name must not resemble that of any other existing company or firm (*b*).
3. The words "royal," "imperial," "municipal," "chartered" and other similar words must not be used without authority, nor the words "building society," "chamber of commerce" or "co-operative" (*b*).

As to 1.—When an old business is turned into a limited company, the old name is often retained with the addition of "limited." The name should be as short as possible, *e.g.*, "Jons, Limited," and "The Palmer Tyre, Limited."

The name (with the word **"limited"**) must be painted up (*c*) or affixed to the outside of every office or place

(*a*) Sect. 2 (1). (*b*) Sect. 17.
(*c*) Companies Act, s. 93. Penalty, £5 a day; and the same, if a person, not being a limited company, uses the word "Limited." Companies Act, s. 364.

in which business of the company is carried on, in a conspicuous position, easily legible, and on all cheques (*d*), notices, advertisements, bills, etc., of the company.

This is to ensure that all persons dealing with the company shall have clear notice that the liability of the members is limited.

In the case of a company registered after the 22nd of November, 1916, the names of the directors must also appear on Catalogues, Circulars, etc., unless the company is specially exempted by the Board of Trade. (*e*)

If the company makes a contract without the use of the word "limited," (*f*) the effect may be most serious for the officers of the company; suppose, for instance, Mr. Salomon, contracting on behalf of his company, had omitted the word "limited," the contract would have been made by him personally (*g*);

Atkins & Co., Ltd. v. Wardle (1889), 58 L. J. Q. B. 377.

A, B, and C, the directors of the South Shields Salt Water Baths Co., Limited, accepted bills thus:—"Accepted A, B, C, directors of the S. Shields Salt Water Baths Company." **Held**, the directors were personally liable.

There is one exception to the rule that the word "limited" must be used. **Companies formed to promote art, science, etc.**, which do not propose to pay dividends, but to apply all gains towards the working of the company, may register a name **without the word "limited"** (*h*). They thus become corporations, and can own property and sue in their own names, and the

(*d*) Companies Act, s. 93 (1) (*c*). There are penalties for default.

(*e*) Companies Act, s. 145.

(*f*) An abbreviation such as "Ltd." may be used. *F. Stacey & Co. Ltd.* v. *Wallis* (1912), 28 Times Rep. 209.

(*g*) See also *Penrose* v. *Martyr* (1858), E. B. & E. 499; *Chapman* v. *Smethurst*, [1909] 1 K. B. 927.

(*h*) Companies Act, ss. 14 and 18. A licence must be obtained from the Board of Trade, and it may be revoked.

liability of the members is limited, *e.g.*, Newnham College, Cambridge, and the Cyclists' Touring Club.

As to name—A new company may not select a name so like that of an existing company or firm as to lead to confusion (*i*). The registrar may refuse to register such a name, or may be prevented by injunction from registering it, and even if he does register it, the other company may get an injunction and have it removed.

But the Court will not interfere with the discretion of the Registrar unless he has exercised his discretion upon some wrong principle of law or has been influenced by matters which he ought not to have considered (*k*).

This jurisdiction is not confined to cases where the old name is actually registered.

Société Panhard et Levassor v. Panhard Levassor Motor Co., Ltd., [1901] 2 Ch. 513.

The well-known French company had no agency in England, but their cars were used in England. An English company was formed with a capital of £100, and with only seven members, with a view to preventing the French company from being registered in England in their own name, and thus competing more successfully with English firms:—**Held**, the name of the English company must be struck off the register. The seven members were ordered, either—

(1) to change the name with the consent of the Board of Trade, or

(2) to wind up the company.

Change of Name.

A company may change its name, either—

(1) by special resolution with the consent of the

(*i*) *British Vacuum Cleaner Co.* v. *New Vacuum Cleaner Co.*, [1907] 2 Ch. 313. *Kingston, Miller & Co.* v. *Thomas Kingston & Co.*, [1912] 1 Ch. 575. *Ewing* v. *Buttercup Margarine Co.*, [1917] 2 Ch. 1.

(*k*) *Rex* v. *Registrar of Companies*, [1912] 3 K. B. 26.

Board of Trade, which will always be given if there is a good reason for the change, or

(2) if it has by inadvertence registered a name similar to that of an existing company, then by consent of the registrar (*l*).

In order to prevent difficulties arising from a change of name it is enacted that all proceedings brought by or against the company in its old name remain good notwithstanding any change of name (*m*).

SECTION 2.

Clause II.—The Registered Office.

Every company must have a registered office as soon as it commences business or within 28 days after incorporation, whichever is the earlier (*n*).

The Memorandum must state whether the office is to be in England (which includes Wales), Scotland or Ireland: such information is all that is required, for it is enough to show where the company will be registered; thus, if "in England," it will be registered at Somerset House.

This fixes the **domicil** and nationality (*o*) of the company, and it cannot be changed without the consent of Parliament. But the situation of the office may be changed from one part of England to another by giving notice to the Registrar.

The register of members (*p*) is kept there; writs and notices must be served there; but if there is no

(*l*) Companies Act, s. 19.
(*m*) Companies Act, s. 19 (5).
(*n*) Companies Act, s. 92. There are penalties in case of default.
(*o*) *Continental Tyre Co.* v. *Daimler Co., Ltd.*, [1915] 1 K. B. 893.
(*p*) It should be clearly understood that the register at Somerset House kept by the Registrar is quite distinct from the company's own register of members kept by its own secretary.

registered office, an order for substituted service will be made, or the writ may be served on the secretary and directors at an office which is not registered.

Re Fortune Copper Mining Co. (1870), 10 Eq. 390.

The registered office of the company had been pulled down. The writ was served on the secretary and directors at an unregistered office.—**Held,** good service.

SECTION 3.

Clause III.—The Objects of the Company.

The company cannot do anything outside the powers given in the Memorandum—anything so done becomes *ultra vires,* and **the Memorandum cannot be changed without leave of the court.**

If an act is done by the directors which is *ultra vires* (beyond the powers of) the company, it is **void,** and the company cannot make it valid, even if every member assents to it.

Ashbury Railway Carriage Co. v. Riche (1875), L. R. 7 H. L. p. 672.

The **Memorandum** gave the company power to make and sell **railway carriages.** The directors bought a **railway concession** in Belgium. The **Articles** gave express power to the company to extend its business beyond the Memorandum by special resolution. The company passed a special resolution to ratify the purchase.—**Held,** the purchase was bad. "If every shareholder had been in the room, and if every shareholder had said, 'that is a contract which we authorise the directors to make,' it would be void. The shareholders would thereby by unanimous consent, have been attempting to do the very thing which by the Act of Parliament they were prohibited from doing" (*per* Lord CAIRNS, L.C.).

This rule is meant to protect future shareholders and the public at large who deal with the company.

But if the act had been *ultra vires* (beyond the powers of) **the directors** only, the shareholders could have ratified it.

Or if it had been *ultra vires* **the Articles**, the company could have altered its Articles in the proper way.

See the last-mentioned case, at p. 674 of the report.

And, if an act is within the powers of the company, any irregularities are cured by the consent of all the shareholders (*q*).

If property is acquired by *ultra vires* expenditure, the company's rights over it may be protected.

National Telephone Co. v. Constables of St. Peter Port, [1900] A. C. 317, 321.

The company put up telephone wires in Guernsey. The defendants cut them down. There was no power in the Memorandum to put up wires there.—**Held,** that fact alone would not prevent the company from suing for damage done to the wires (*r*).

The powers in the Memorandum must not, however, be construed strictly, and the company may do anything which is **fairly incidental** to the powers specified.

Foster v. London, Chatham and Dover Rail. Co., [1895] 1 Q. B. 711.

The company acquired a piece of land for the purposes of its railway. The railway was erected on arches. The company let the arches as workshops, etc. The neighbours objected (on account of noise and rubbish), and claimed that it was *ultra vires*:—**Held,** valid, as being fairly incidental to the powers of the company (*s*).

On the other hand, the following was held **not to be incidental.**

(*q*) *Re Express Engineering Works, Ltd.*, [1920] 1 Ch. 466: *Parker & Cooper* v. *Reading*, [1926] Ch. 975.

(*r*) See also *Ayers* v. *South Australian Banking Co.*, L. R. 3 P. C. pp. 558 and 559.

(*s*) See also *County Hotel Co.* v. *London & North Western Railway*, [1918] 2 K. B. 251; *Evans* v. *Brunner, Mond & Co.*, [1921] 1 Ch. 359.

Attorney-General v. London County Council, [1902] A. C. 165.

The council had power to run tramways. It ran omnibuses to feed the tramways.—**Held,** this was outside its powers.

N.B.—These were statutory corporations, but the same principle applies to the special statute as to a Memorandum of Association.

Powers not expressly mentioned in the Memorandum may be implied if they are warranted by the constitution of the company. Thus a trading company has implied power to borrow (see p. 152) and to sell land (*t*) and to give pensions or other rewards to its servants or employees (*u*).

A company **may hold land** in spite of the Mortmain Acts (*x*), unless it is formed for the purpose of promoting art, science, religion, charity, or other like object not involving the acquisition of gain. In such a case it cannot hold more than two acres of land without the licence of the Board of Trade (*x*).

The powers of a company are generally expressed in very wide terms, because it is very inconvenient for a company, or those dealing with it, to be in doubt as to the powers which the company has.

If these powers are set out in very general terms, they are apt to be misleading, as the Courts have sometimes construed these wide powers in a very narrow manner. A company usually has a **main object**, which is put first in the list of its objects—or there may be two or more main objects, as in clauses (a) and (b) in the form on p. 13.

Detailed powers which are usually set out under clause 3 of the Memorandum are sometimes construed

(*t*) *Re Kingsbury Collieries, Ltd.*, [1907] 2 Ch. 259.
(*u*) *Cyclists' Touring Club* v. *Hopkinson*, [1910] 1 Ch. 179.
(*x*) Companies Act, s. 14.

as merely incidental to the **main** objects of the company, which are ascertained from the first few paragraphs of clause 3, read in conjunction with the name of the company (*Re Crown Bank* (1890), 44 Ch. D. 634).

Stephens v. Mysore Reefs, Limited, [1902] 1 Ch. 745; **Pedlar v. Road Block Gold Mines, Limited,** [1905] 2 Ch. 427.

In both these cases the Memorandum (clause 2) authorised the company to acquire gold mines "in Mysore and elsewhere," and the Memorandum in each case contained wide general clauses:— **Held,—In the first case,** that the company **could not** purchase an option with a view to forming a new company to work mines on the Gold Coast; **in the second case,** that the company **could** purchase and work a gold mine in Bombay; because the first did not come within clause 2 and the second did.

In order to avoid this narrow construction adopted by the Courts the Memorandum of Association is usually now framed so as to state all the possible things that the company may wish to do as independent main objects of the company, and, if this is clearly the intention of the document, the Courts will construe it in this manner.

Cotman v. Brougham, [1918] A. C. 514.

An oil company underwrote shares in a rubber company. The Memorandum contained as one of the objects subscribing for shares of other companies, and it was expressly stated that each of the objects were to be considered as separate and independent main objects of the company.—**Held,** the underwriting was not *ultra vires*.

If the **main object** is gone, the company may be wound up.

Re Amalgamated Syndicate, [1897] 2 Ch. 600.

The company was formed to erect stands and let out seats for the Diamond Jubilee. The Memorandum also contained power (d) to carry on all kinds of promotion business, and (e) to act as house agents. There was a heavy loss. After the Jubilee the directors proposed to carry on business under clauses (d) and (e):—

Held, the company must be wound up, its **substratum** or **main object** having gone. VAUGHAN WILLIAMS, J.: "I ought not to read these clauses as defining a succession of objects different from the main object, but . . . as general powers merely providing for the execution by the company of matters which are only incidental to its main objects."

This rule has not been altered by the case of *Cotman* v. *Brougham* (above) (*y*).

The objects of a company **must not be illegal**, *e.g.* to carry on a lottery, or to do something forbidden by the Companies Act, such as buying its own shares (see p. 87), or blasphemous (*Bowman* v. *Secular Society*, [1917] A. C. 406).

A power given in the Memorandum to sell the whole of its undertaking for shares (as in clause (i) in the form on p. 15) does not enable the company to force its shareholders to take shares in a new company (*z*).

A power is often taken (as in clause (a) in the form on p. 13) to adopt an agreement already entered into by an agent for the company before its formation. The law relating to such contracts is peculiar and will be discussed in Chapter V.

The powers of a company may be extended.

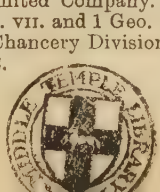
A company may alter or extend its memorandum (*a*) by special resolution confirmed by the court (*b*) if the alteration is required to enable the company—

(*y*) The case of *Stephens* v. *Mysore Reefs* (above) probably went too far in extending this principle to the construction of a Memorandum on a question of *ultra vires*. The considerations above really only apply on a question of winding up.

(*z*) *Bisgood* v. *Henderson's Transvaal, Limited*, [1908] 1 Ch. at p. 757, overruling *Cotton* v. *Imperial, etc., Corporation*, [1892] 3 Ch. 454.

(*a*) Companies Act, s. 5. This extends to a friendly Society which has been converted into a Limited Company. Companies (Converted Societies) Act, 1910, 10 Ed. VII. and 1 Geo. V., c. 23.

(*b*) This includes any judge in the Chancery Division. *Re Essex etc., Society Limited*, [1909] W. N. 102.



(a) to carry on its business more economically or more efficiently; or

(b) to attain its main purpose by new or improved means; or

(c) to enlarge or change the local area of its operations; or

(d) to carry on some other business which may be conveniently combined with its own; or

(e) to restrict or abandon any of its objects (*c*); or

(f) to sell its undertaking; or

(g) to amalgamate with another company.

But no alteration can be made requiring a member to take up further shares or otherwise increasing his liability (*d*). The Court will not allow entirely new powers to be acquired except on special terms.

Re Cyclists' Touring Club, [1907] 1 Ch. 269.

The company was registered without the word "limited" (see p. 18). The Memorandum stated that the objects were "to promote, assist, and protect the use of bicycles, tricycles, and other similar vehicles on the public roads." The company proposed to alter its powers by admitting all tourists, including motorists:— **Held,** the alteration must not be allowed, as it did not fall within clause (a) to (e) of the section: especially as one of the objects of the company was to protect cyclists against motorists.

The Court may, before approving an extension of objects, require an alteration in the name of the company (*e*), unless such an alteration would be very inconvenient (*f*).

The procedure is by petition to the court (*g*).

A company governed by a deed of settlement may adopt a

(*c*) *Jewish Colonial Trust Limited*, [1908] 2 Ch. 287, and see *New Westminster Brewery Co. Ltd.*, [1911] W. N. 247.

(*d*) Companies Act, s. 22.

(*e*) *Indian Mechanical Gold Co.*, [1891] 3 Ch. 538.

(*f*) *Trust Co. of Australasia*, [1908] W. N. 229.

(*g*) A form of petition will be found under the heading "Reduction of Capital."

Memorandum and articles in its place by the same procedure (sect. 334).

SECTION 4.

Clause IV.—The Limitation of Liability.

A statement that the liability of members is limited (as in the form on p. 15) without more, means "limited by shares"—that is, that no member can be called upon to pay more than the nominal amount of his share, or so much thereof as remains unpaid; and, if his shares be fully paid up, his liability is nil.

Exception. If a company carries on business for more than six months after the number of its members has been reduced below seven (or two in case of a private company) every member who knows this fact is liable to pay all the debts contracted during that time (*h*).

A company may be limited by guarantee. Then clause 5 will run, "Every member of the company undertakes to contribute to the assets of the company . . . for payment of the debts . . . etc. . . . such amount as may be required, not exceeding £ ."

This form of company is not nearly so common as the former, and is dealt with on p. 247.

In the case of a banking company which issues notes, the liability of its members on the notes is unlimited (*i*).

SECTION 5.

Clause V.—The Capital Clause.

This clause must state the amount of the nominal capital of the company and the number and amount of the shares (*k*). See clause 5 of the form on p. 15.

There is no legal limit to the amount of capital or

(*h*) Companies Act, s. 28. (*i*) Companies Act, s. 360.
(*k*) Companies Act, s. 2.

of each share: some companies have a capital of only £7, while the capital of others may be £20,000,000 or more. The shares may be 1s. each or £5000, or any other amount.

The amount of capital is determined by the cost of starting the business, and the amount required for working it when started.

Thus, suppose the business and goodwill are to be purchased by the company for £200,000 in cash and £100,000 in shares, and £100,000 is needed for working capital.

Allowing £50,000 for emergencies, the amount of **cash** required to be raised would be £350,000. £150,000 of this may be borrowed by the issue of **debentures**, say 1500 debentures of £100 each. This will leave £200,000 to be subscribed in cash, besides the £100,000 worth of shares for the vendors of the business.

The capital of the company will then be £300,000 divided into (say) 1000 five per cent. preference shares of £100 each, and 200,000 ordinary shares of £1 each. (*Note.*—Money borrowed on debentures is not "**capital.**").

The fact that there are different classes of shares need not be stated in the Memorandum, but may be provided for in the Articles.

Sometimes the rights of the preference shareholders are specified in the Memorandum so as to give them further security, for it is then impossible for the company to change their rights without the sanction of the Court (*l*).

(*l*) See *post*, pp. 137 and 138.

The Memorandum sometimes gives express power to the company to alter these rights, provided the alteration is sanctioned by resolutions passed at separate meetings of the holders of the classes of shares affected by the alteration.

Provisions are sometimes inserted in the Memorandum, authorising the company to increase its capital and issue preference shares, &c.; but such provisions are not necessary.

SECTION 6.

Association Clause and Subscription.

See the clause at the end of the form on p. 16.

There must be **at least** seven persons (*m*), and they must subscribe for **at least** one share each.

The full name and description of each must be set out.

Any one may subscribe, even an infant (*Re Laxon & Co.*, [1892] 3 Ch. 555).

His contract to take shares is voidable but not void.

All the members may be foreigners, provided the business or its management is to be carried on in England. An English registered company can own a British ship though all its members are foreigners (*R.* v. *Arnaud* (1846), 9 Q. B. 806).

The signatures must be attested by a witness; but one witness to all the signatures is sufficient.

The duties of the subscribers are—

(1) to pay for the shares for which they have subscribed;

(2) to sign the Articles of Association;

(3) to appoint the first directors; and

(*m*) Except in the case of a private company, see Chapter XVII.

(4) usually to act as directors until such appointment (*n*).

Form of Articles of Association.

The following are some of the clauses contained in the articles of a company now in existence, and will serve to show some of the matters usually dealt with.

(*Many of the clauses are omitted for the sake of brevity.*)

THE COMPANIES ACT, 1929.

Company limited by Shares.

Articles of Association of Blank Company, Limited.

1. *Definitions.*—"The Companies Act" means the Companies Act, 1929. "The Office" means the registered office of the Company.

2. *Table "A" not to apply.*—The regulations contained in Table "A" in the First Schedule to the Companies Act, shall not apply to the company.

3. *Preliminary contract.*—The company shall forthwith adopt the agreement dated the 31st December, 1929, and made between William Jones of the one part and Alfred Smith on behalf of this company of the other part, which has, for the purpose of identification, been initialed by three of the subscribers to the Memorandum of Association, and the directors shall carry the said agreement into effect with or without modification.

(*n*) This depends on the Articles.

SHARES.

4. *Capital.*—The capital of the company shall be divided into 5000 preference shares of £1 each, and 20,000 ordinary shares of £1 each. The said preference shares shall confer the right to a fixed cumulative preferential dividend at the rate of five per cent. per annum, and the right in a winding up of the company to repayment of capital in priority to all other shares, but no other rights in the capital or profits of the company.

6. *Underwriting commission.*—The directors may exercise the powers conferred on the company by s. 43 of the Companies Act, but so that the commission in such section mentioned shall not exceed ten per cent. (*o*), payable either in cash or shares, on the shares in each case offered for subscription.

CERTIFICATES.

11. *Certificates.*—The certificates of title to shares shall be issued under the seal of the company, and signed in such manner as the directors shall prescribe.

12. *Members entitled to one gratis.*—Every member shall be entitled without payment to one certificate for all the shares registered in his name. Every certificate of shares shall specify the numbers of the shares in respect of which it is issued, and the amount paid up thereon.

CALLS.

15. *Calls.*—The directors may, from time to time, make such calls as they think fit upon the members in respect of all money unpaid on the shares held by them and not by the conditions of allotment thereof

(*o*) Sect. 43 (1) (*b*).

made payable at fixed times, and each member shall pay the amount of every call so made on him to the persons and at the time and at the place appointed by the directors. A call may be made payable either in one sum or by two or more instalments. A call shall be deemed to have been made at the time when the resolution of the directors authorising such call was passed. Seven days' notice at least of any call shall be given specifying the time and place of payment and to whom such call shall be paid.

FORFEITURE AND LIEN.

19. *If call or instalment not paid, notice may be served.*—If any member fail to pay any call or instalment on or before the day appointed for the payment of the same, the directors may at any time thereafter during such time as the call or instalment remains unpaid, serve a notice on such member requiring him to pay the same, together with any interest that may have accrued, and all expenses that may have been incurred by the company by reason of such non-payment.

20. (Form of notice.)

21. *If notice not complied with, shares may be forfeited.*—If the requirements of any such notice as aforesaid are not complied with, any shares in respect of which such notice has been given may at any time thereafter, before payment of all calls or instalments, interest and expenses due in respect thereof, be forfeited by a resolution of the directors to that effect. Such forfeiture shall include all dividends declared in respect of the forfeited shares, and not actually paid before the forfeiture.

23. *Forfeited shares become the property of the company.*—Any shares so forfeited shall be deemed to be the property of the company and the directors may sell, re-allot or otherwise dispose of the same in such manner as they think fit, and either subject to or freed from the calls made prior to forfeiture.

24. *Arrears payable, notwithstanding forfeiture.*—Any member whose shares have been forfeited shall, notwithstanding, be liable to pay and shall forthwith pay to the company all calls, instalments, interest, and expenses owing upon or in respect of such shares at the time of forfeiture, together with interest thereon from the time of forfeiture until payment at the rate of ten per cent. per annum, and the directors shall enforce the payment of such moneys or any part thereof if they think fit, but shall be under no obligation so to do.

25. *Power to annul forfeiture.*—The directors may, at any time before the share so forfeited shall have been sold, re-allotted, or otherwise disposed of, annul the forfeiture thereof upon such conditions as they think fit.

26. *Company's lien.*—The company shall have a first and paramount lien upon all the shares (other than fully paid-up shares) registered in the name of each member (whether solely or jointly with others) for his debts, liabilities, and engagements, solely or jointly with any other person, to or with the company, whether the period for the payment, fulfilment or discharge thereof shall have actually arrived or not, and such lien shall extend to all dividends declared on such shares.

27. *As to enforcing lien by sale.*—For the purpose of enforcing such lien the directors may sell the shares subject thereto in such manner as they think fit; but no sale shall be made until such period as aforesaid shall have arrived, and until notice in writing of the intention to sell shall have been served on such member, his executors or administrators, and default shall have been made by him or them in the payment, fulfilment, or discharge of such debts, liabilities, or engagements, for seven days after such notice.

TRANSFER AND TRANSMISSION OF SHARES.

30. *Execution of transfer.*—The instrument of transfer shall be in writing (*p*), signed both by the transferor and the transferee, and the transferor shall be deemed to remain a holder of the shares until the name of the transferee is entered in the register in respect thereof.

31. *Form of transfer.*—The instrument of transfer of any shares shall be in the usual or common form, or in such other form as the directors shall approve.

32. *Restraint on transfer.*—The directors may decline to register any transfer of shares upon which the company has a lien, and in the case of shares not fully paid up, may refuse to register a transfer without assigning any reason therefor.

37. *Trusts not recognised.*—The company shall be entitled to treat the registered holder of any share as the absolute owner thereof and accordingly shall not be bound or affected by notice of any trust, charge, or other interest, legal or equitable, partial or absolute,

(*p*) The transfer must be in writing (s. 63).

by virtue whereof any person other than the registered holder or the survivor of joint holders shall be, or shall claim to be, interested in any share.

39. *Persons entitled by transmission to be registered.*—Where any person entitled under the transmission clause to any partly paid shares shall fail for two months after being thereto required by the directors in writing to procure himself or some other person to be registered as holder of the shares, the directors may, at any time thereafter, before compliance with the request, by resolution, forfeit such shares.

SHARE WARRANTS.

40. *Power to issue share warrants—Conditions.*—The company, with respect to fully paid-up shares, may issue warrants (hereinafter called "share warrants") stating that the bearer is entitled to the shares therein specified and may provide, by coupons or otherwise, for the payment of future dividends on the shares included in such warrants. The directors may determine, and from time to time vary, the conditions upon which share warrants shall be issued, and in particular, upon which a new share warrant or coupon shall be issued in the place of one worn out, defaced, lost, or destroyed, upon which the bearer of a share warrant shall be entitled to attend and vote at general meetings, and upon which a share warrant may be surrendered and the name of the holder entered in the register in respect of the shares therein specified. Subject to such conditions, and to these presents, the bearer of a share warrant shall be a member to the full extent. The holder of a share warrant shall be subject to the conditions for the time

being in force, whether made before or after the issue of such warrant.

CONVERSION OF SHARES INTO STOCK.

41. *Paid-up shares convertible into stock.*—The company (in general meeting) may convert any paid-up shares into stock, and re-convert any stock into fully-paid shares of any denomination. When any shares have been converted into stock, the several holders of such stock may thenceforth transfer their respective interests therein, or any part of such interests, in the manner and subject to the regulations hereinbefore provided. Provided always that the directors may from time to time, if they think fit, fix the minimum amount of stock transferable, and direct that fractions of a pound shall not be dealt with, but with power, at their discretion, to waive such rules in any particular case.

INCREASE AND REDUCTION OF CAPITAL.

43.—*Increase of capital.*—The company in general meeting may, from time to time, increase the capital by the creation of new shares of such amount as may be deemed expedient.

48. *Reduction of capital.*—The company may from time to time reduce its capital or cancel shares in any manner permitted by law, and may consolidate or subdivide any of its shares, and paid-up capital may be paid off upon the footing that the amount may be called up again or otherwise.

BORROWING POWERS.

49. *Borrowing Powers.*—The directors may from time to time, as in their judgment they may deem expedient, borrow, for the purposes of the company, any sum or sums of money, and they may secure the moneys so borrowed by the issue of debentures or debenture stock, mortgages, bonds or other instruments of charge upon the whole or any part or parts of the company's property or assets (both present and future) including its uncalled capital for the time being, or otherwise as they may think fit. The directors shall duly comply with the requirements of section 79 of the Companies Act or any statutory modification thereof in regard to the registration of mortgages and charges therein specified and otherwise

GENERAL MEETINGS.

50. *Statutory meeting.*—The statutory meeting of the company shall (as required by section 113 of the Companies Act) be held within a period of not less than one month or more than three months from the date at which the company shall be entitled to commence business, and the directors shall comply with the other requirements of that section, as to the report to be submitted and otherwise.

51. *General meetings.*—Other general meetings shall be held once in the year 1930 and once in every subsequent year, at such time (not being more than fifteen months from the date of the last preceding meeting) and at such place as may be prescribed by the company in general meeting; and, if no other time or place is

prescribed, a general meeting shall be held at such time (subject as aforesaid) and at such place as may be determined by the directors.

53. *When extraordinary meeting to be called.*—The directors may, whenever they think fit, and they shall upon a requisition made in writing by members holding not less than one-tenth of the issued capital of the company, upon which all calls or other sums then due have been paid, forthwith proceed to convene an extraordinary general meeting of the company.

58. *Notices of meetings.*—Seven clear days' notice at the least, specifying the place, day, and hour of meeting, and, in case of special business, the general nature of such business, shall, except as next hereinafter mentioned, be given by notice sent by post or otherwise served as hereinafter provided.

59. *Accidental omission of notice not to invalidate resolution.*—The accidental omission to give any such notice to any of the members or the non-receipt by any member of such notice, shall not invalidate any resolution passed at such meeting.

PROCEEDINGS AT GENERAL MEETINGS.

60. *Business of ordinary general meetings.*—The business of an annual general meeting shall be to receive and consider the statement of income and expenditure, the balance-sheet, the ordinary reports of the directors and auditors, to elect directors and other officers in the place of those retiring by rotation or otherwise, to declare dividends and to transact any other business which under these presents ought to be

transacted at an annual general meeting. All other business transacted at an annual general meeting, and all business transacted at an extraordinary general meeting shall be deemed special.

64. *How questions decided.*—Every question submitted to a meeting shall, unless unanimously decided, be decided, in the first instance, by a show of hands, and in the case of an equality of votes the chairman shall, both on show of hands and at a poll, have a casting vote in addition to the vote or votes to which he may be entitled as a member.

65. *Declaration of chairman conclusive.*—At any general meeting (unless a poll is demanded in writing on or before the chairman's declaration next hereinafter referred to, by at least five members personally present, or by a member or members holding or representing by proxy or entitled to vote in respect of at least one-tenth of the nominal amount of the capital represented at the meeting) a declaration by the chairman that a resolution has been carried or carried by a particular majority, or lost or not carried by a particular majority, and an entry to that effect in the book of the proceedings of the company shall be conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against such resolution.

VOTES OF MEMBERS.

71. *Voting power.*—Subject to any special terms as to voting upon which any shares may have been issued, or for the time being be held, every member of the company, upon a show of hands, shall have one vote,

and upon a poll one vote for every share held by him of any class.

74. *Proxies.*—Votes may be given personally or by proxy. The instrument appointing a proxy shall be in writing, under the hand of the appointer, or if such appointer is a corporation, under its common seal. No person shall be appointed a proxy who is not a member of the company, and qualified to vote, except that a corporation holding shares conferring the right to vote may appoint one of its officers or members its proxy although not a member of the company.

DIRECTORS.

80. *Number of directors.*—Unless and until otherwise determined by a general meeting, the number of directors shall not be less than three or more than seven. The continuing directors may act, notwithstanding any vacancy in their body, but so that if the number falls below the minimum fixed by the regulations of the company for the time being, the directors shall not, except for the purpose of filling up vacancies or summoning a general meeting of the company, act so long as the number is below the minimum.

83. *Remuneration.*—The directors (other than the managing director, if any) shall receive, by way of remuneration in respect of each financial year of the company, fifty guineas per annum for each director, with an addition of fifty guineas per annum for the chairman, and a sum equal to five per cent. of the net profits of the company divided amongst the members in that year. In addition to their remuneration the

directors shall be paid all travelling and other expenses incurred while on the business of the company.

84. *Qualification.*—The qualification of a director shall be the holding of 300 shares of the company. A director may act before acquiring his qualification, but if not already qualified, shall acquire the same within two months from his appointment.

85. *When office of director vacated.*—The office of director shall be, *ipso facto*, vacated:

(a) If he become bankrupt, or suspend payment, or file a petition for liquidation of his affairs, or compound with his creditors.

(b) If he be found a lunatic or become of unsound mind.

(c) If he absent himself from the meetings of the directors for a period of six months without special leave of absence from the directors, unless he is absent on the business of the company, or if he fails to attend at least one half of the board meetings held in any year.

(d) Etc.

86. *Directors interested in contracts with company.*—No director, or intended director, and no person standing in a fiduciary capacity or position to the company shall be disqualified by his office from contracting with the company, either as vendor, or otherwise, nor shall any such contract, or any contract or arrangement entered into by or on behalf of the company, with any company, or partnership of or in which any such director or person shall be a member, or otherwise interested, be avoided, nor shall

any director or person so contracting or being such member, or so interested, be liable to account to the company for any profit realised by any such contract or arrangement by reason only of such director holding that office, or of the fiduciary relation thereby established. Provided that the fact of his being interested therein, and the nature of his interest, shall be disclosed by him to the meeting of the directors at which the contract is determined on if his interest then exists, or in any other case at the first meeting of the directors after the acquisition of his interest, and except in respect of the agreement referred to in Article 3 hereof, no director shall vote in respect of any such contract or arrangement, and if he do vote his vote shall not be counted. A general notice that a director is a member of any firm or company, and is to be regarded as interested in all transactions with such firm or company shall be sufficient disclosure under this Article, and after such general notice shall have been given it shall not be necessary to give any special notice or notices relating to any particular transaction with such firm or company.

ROTATION OF DIRECTORS.

87. *Retirement of directors.*—At the annual general meeting to be held in the year 1930, and at the annual general meeting in each succeeding year, one-third of the directors, or if their number is not a multiple of three then the number nearest to, but not exceeding one-third of the directors, shall retire from office.

99. *Acts valid, notwithstanding defective appointment.*—All acts done at any meeting of the directors, or of a committee of directors, or by any person acting

as a director, shall, notwithstanding that it shall afterwards be discovered that there was some defect in the appointment of such directors or persons acting as aforesaid, or that they or any of them were disqualified or that their or any of their offices were for any reason vacated, be as valid as if every such person had been duly appointed, and was qualified to be a director.

POWERS OF DIRECTORS.

106. *General powers.*—The management of the business of the company shall be vested in the directors, who may exercise all such powers of the company as are not hereby, or by statute, expressly directed or required to be exercised by the company in general meeting, subject nevertheless to any regulations of these Articles, and to the provisions of the Companies Act, and to such regulations not being inconsistent with the aforesaid regulations or provisions as may be prescribed by the company in general meeting; but no regulation made by the company in general meeting shall invalidate any prior act of the directors which would have been valid if such regulation had not been made.

MANAGING DIRECTORS.

108. *Power to appoint.*—The directors may, from time to time, appoint one or more of their body to be managing director or managing directors of the company, either for a fixed term, or without any limitation as to the period for which he or they are to hold such office, and may, subject to any contract between

him or them and the company, from time to time, remove or dismiss him or them from office, and appoint others in his or their place.

DIVIDENDS.

113. *Dividends.*—The company in general meeting may (subject to any preference or priority for the time being existing and subject to the provision hereinafter contained), declare a dividend to be paid to the members in proportion to the amount paid up or credited as paid up on the shares. No larger dividend shall be declared than is recommended by the directors, but the company in general meeting may declare a smaller dividend.

114. *Only out of profits.*—No dividend shall be payable except out of the profits arising from the business of the company. The declaration of the directors as to the amount of the net profits of the company shall be conclusive.

REGISTERS.

119. The company shall keep registers of members, directors, and mortgages as required by sections 88, 95, and 144 respectively of the Companies Act and shall make the returns required by sections 108 and 110 of the Companies Act (*q*).

ACCOUNTS.

122. *Proper accounts to be kept.*—The directors shall cause true accounts to be kept of the sums of money received and expended by the company, and all matters in respect of which such receipt and expenditure take

(*q*) Clauses of this character are frequently inserted to act as reminders to the officers of the company.

place, and of the assets, credits and liabilities of the company. Such of the books of account as shall be in the United Kingdom shall be kept at the registered office of the company, or at such other place or places as the directors think fit.

Names, Addresses, and Descriptions of Subscribers.
John Jones, of .
William Smith, of .
Thomas Brown, of .
Benjamin Green, of .
Andrew Black, of .
Arthur Drew, of .
John Smith, of .

Dated this 1st day of May, 1929.

Witness to all the above written signatures,

GEORGE BROWNE.

CHAPTER IV.

THE ARTICLES OF ASSOCIATION.

BEFORE reading this Chapter, read the form of Articles of Association on the last sixteen pages, which Articles are actually in use by an existing company. (Owing to the length of the whole document, only the more important and instructive clauses are set out.)

The Articles must be printed and signed by the same persons as signed the Memorandum, with at least one witness, and stamped as a deed.

It is not necessary to have Articles (*a*). If there are none, a form of Articles set out in the First Schedule to the Companies Act and called **Table A** applies, and becomes the Articles of the company.

The **regulations** of a company are the Articles, together with any special resolutions passed by the company. That is to say, the regulations which the members are under a statutory covenant to observe.

The Articles **bind the company and the members** thereof to the same extent **as if they had been signed and sealed by each member and contained covenants by each member to observe them** (*b*), and any new

(*a*) Except in case of a company limited by guarantee or unlimited (Companies Act, s. 6). A private company must also have articles to limit the number of members, etc. (see p. 242, *post*).

(*b*) Companies Act, s. 20.

regulations are as binding as if they had been originally inserted in the Articles (*c*).

Result.

(1) Each member is bound to the company;

(2) Each member is bound to the other members;

Borland v. Steel Bros., [1901] 1 Ch. 279.

The Articles, as altered, provided that the shares of any member who became bankrupt should be sold to certain persons at a certain price. B. became bankrupt. His trustee claimed that he was not bound by the altered article:—**Held,** the Articles, as altered in the proper way, **are a personal contract between B. and the rest of the members,** and B. and his trustee are bound (*d*).

(3) Neither the company nor the members are bound to outsiders;

Eley v. Positive, etc., Co. (1876), 1 Ex. D. 88.

The Articles provided that E. should be employed as solicitor for the company. The company employed other solicitors. E. sued the company for breach of contract:—**Held,** there was no contract with E. and he could not sue.

The company is **only** bound to the members to a limited extent; for the company is only bound "as if the **members** had signed," and the signature of the members cannot bind the company (*e*).

But the company may be liable on an implied contract in the terms of the Articles.

New British Iron Co., [1898] 1 Ch. 324.

Article 62 provided that the remuneration of the directors should be £1000. A director sued the company for his fees:—**Held,**

(*c*) Companies Act, s. 10.
(*d*) And see *Attorney-General* v. *Jameson*, [1904] 2 I. R. 646.
(*e*) *Hickman* v. *Kent or Romney Marsh Association*, [1915] 1 Ch. 881, at p. 897.

"the Article is not in itself a contract between the company and the directors: it is only part of the contract constituted by the Articles between the members of the company *inter se*. . . .

"But where, on the footing of that Article, the directors are employed by the company and accept office, the terms of Article 62 are embodied in and form part of the contract between the company and the directors."

The Articles are subject to the Memorandum, and cannot give powers which are not given by the Memorandum. But for purposes of construction on points which need not necessarily be put in the Memorandum, they are to be read together, and the Articles may then explain or amplify the Memorandum (*London Financial Association* v. *Kelk* (1883), 26 Ch. D. 107).

The Articles must not contain anything illegal or ultra vires the company.

Any Article which is the same in substance as any Article in Table A, cannot be void on these grounds (*Lock* v. *Queensland Investment Co.*, [1896] A. C. 461).

The Articles can be altered by the company, **by a special resolution** at **a general meeting.**

I.e., a resolution passed by a three-quarters majority of those voting at a meeting of which at least twenty-one days' notice has been given specifying the intention to propose the resolution "as a special resolution" (*f*).

The company may freely alter its articles, provided:

(1) **The altered articles do not contain anything illegal.**

(2) The alteration does not require a shareholder to subscribe for more shares or otherwise increase his liability (*g*).

(*f*) Companies Act, s. 117.
(*g*) Companies Act, s. 22.

(3) **They do not go outside the powers given by the Memorandum.**

It was at one time held (in *Hutton* v. *Scarborough Cliff Hotel Co.* (1865), 2 Drew. & Sm. 521), that if the alteration altered the constitution of the company, it was void. But this was overruled in

Andrews v. Gas Meter Co., [1897] 1 Ch. 361.

The Memorandum provided that the capital of the company should be £60,000 divided into 600 shares of £100 each. Power was given to increase the capital, but there was no power in the Memorandum or Articles to issue preference shares. The Company, by special resolution, altered its Articles so as to give itself power to issue preference shares, and issued them:—**Held**, the issue was good. If this had been **forbidden** by the Memorandum it could not be done: but if not, it is immaterial that the change quite alters the composition of the company.

And (4). **The alteration does not constitute a fraud on the minority.**

Thus, if there were 1000 shares of £1 each, ranking equally as to dividend, a resolution that shares numbered 1 to 800 should bear three times as much dividend as the others, would be bad.

Menier v. Hooper's Telegraph Works
(1874), L. R. 9 Ch. 350.

The majority of the members of Company A. were also members of Company B., and at a meeting of Company A. they passed a resolution to compromise an action against Company B. in a manner alleged to be favourable to B. but unfavourable to A.:—**Held**, the minority of Company A. can bring an action to have the compromise set aside (*h*).

(*h*) And see *Punt* v. *Symons & Co.*, [1903] 2 Ch. 506; and *Marshall's Valve Gear Co.* v. *Manning, Wardle & Co., Ltd*, [1909] 1 Ch. 267; and cf. *Neale* v. *City of Birmingham Tramways*, [1910] 2 Ch. 464.

The result appears to be that any change within the powers of the Memorandum will be allowed, subject to this limit, that the majority cannot alter the regulations so as to sacrifice the interests of the minority without a reasonable prospect of advantage to the company as a whole.

Brown v. British Abrasive Wheel Co., [1919] 1 Ch. 290.

A large majority of the shareholders wished to buy up the minority with a view to extending its capital. The minority refused to sell, and the majority then passed special resolutions altering the Articles so as to enable nine-tenths of the shareholders to buy out any other shareholder. **Held,** the alteration of the Articles could be restrained. (*i*)

Where the capital is divided into different classes of shares (*k*), the Articles usually provide that the special rights of each class may be altered with the consent of a certain majority of the shareholders of that class. Where this is not done, there is some doubt as to how far the company in general meeting can alter the rights of any class of shareholders, without the consent of that class. Every shareholder when he takes his shares is presumed to know that his rights may be altered by special resolution. On the other hand, the class of shareholders who form the majority could not alter the Articles simply for the purpose of depriving the smaller class of their rights.

E.g. if the capital were divided in 1000 6 per cent. preference shares and 4000 ordinary shares, the holders of the ordinary shares would not except in very special circumstances be allowed to reduce the preference dividend to 3 per cent. It would in such a case be extremely difficult for the ordinary shareholders to prove that such a reduction was necessary for the benefit of the company as a whole, and was not made for the purpose of benefiting themselves at the expense of the preference shareholders.

But an arrangement which benefits the company may

(*i*) See also *Dafen Tin Plate Co.* v. *Llanelly Steel Co.*, [1920] 2 Ch. 124; *Shuttleworth* v. *Cox Brothers & Co. (Maidenhead), Ltd.* [1927] 2 K. B. 9.

(*k*) See p. 129, *post.*

be allowed, even though it is unfair to individual shareholders.

Allen v. Gold Reefs, Limited, [1900] 1 Ch. 656.

The Articles gave the company a lien on all shares "not fully paid up," for calls due to the company. A. was the only holder of fully paid shares, he also owed money to the company for calls due on other shares. A. died. The company altered its Articles by striking out the words "not fully paid up," and thus gave itself a lien over all A.'s shares:—**Held,** this was good. The power must be exercised for the benefit of the company as a whole. "I can see no reason for judicially putting any other limit on the power": LINDLEY, M.R.

The majority may even take power to exclude the minority where this is done *bonâ fide* for the benefit of the company.

Sidebottom v. Kershaw, Leese & Co., [1920] 1 Ch. 154.

The articles were altered so as to enable the directors to require any shareholder *who was competing with the company* to transfer his shares at their full value. **Held,** this alteration was valid.

A company cannot deprive itself of its powers to alter its regulations (*Andrews* v. *Gas Meter Co.*, see p. 49).

And it cannot by altering its articles justify a breach of contract with third parties.

I.e. a company cannot avoid its liabilities under a contract made with persons who are not members of the company by altering its Articles (*l*). But whether a company can be restrained by injunction from altering its articles is a matter of doubt (*m*).

(*l*) *British Equitable Co.* v. *Baily*, [1906] A. C., at p. 86.

(*m*) *Punt* v. *Symons*, [1903] 2 Ch. 506, appears to decide that the company cannot be restrained; but *British Murac Syndicate* v. *Alperton Rubber Co.*, [1915] 2 Ch. 186, decides that it can. This latter case, however, appears to be founded upon a misconception of the true effect of the decision in *British Equitable Co.* v. *Baily* (*supra*).

An alteration not made in the proper way is not complete, but may have some effect.

Muirhead v. Forth Mutual Insurance Association, [1894] A. C. 72.

An insurance company purported to alter its Articles by adding that every policy should contain a certain clause. The alteration was not properly made, but the new Article was indorsed on every policy, which was made "subject to the Articles":—**Held,** a policy holder was bound by the Article.

The Memorandum and Articles are registered with the Registrar (*n*) at Somerset House, and may be inspected by **any one** on payment of a small fee (*o*), but only **members** of the company are entitled to have a copy. The company may charge 1*s.* for the copy (*p*).

The **result** of this publicity is that any one who deals with the company is deemed to have notice of the contents of the Memorandum and Articles, and therefore of the powers of the company and the directors; and if any one deals with the company in matters which are inconsistent with the powers so given, he must take the consequences.

But so long as the act done is not **inconsistent** with the Memorandum and Articles, **an outsider is not bound to inquire whether all the necessary steps have been taken.** That is, he is entitled to assume that the directors have acted properly.

This is called **the Rule in the Royal British Bank v. Turquand** (1856), 6 E. & B. 327.

The directors issued a bond to T.—they had power to issue bonds **if authorised by special resolution.** No resolution had been passed:— **Held,** T. could sue on the bond. He was entitled to assume that a resolution had been passed.

(*n*) Companies Act, s. 12. (*o*) *Ibid.*, s. 314.
(*p*) *Ibid.*, s. 23.

"Persons dealing with the company are bound to read the registered documents, and to see that the proposed dealing is not inconsistent therewith. But they are not bound to do more; they need not inquire into the regularity of the internal proceedings."

Duck v. The Tower Galvanising Co., Limited,
[1901] 2 K. B. 314.

R., who had business assets of the value of £100, and debts of the same amount, formed his business into a company. R. continued to carry on the whole business of the company, and without any meeting issued debentures to D. for £500 under the seal of the company. The regulations gave power to issue debentures:—**Held,** D. was entitled to assume that the debentures were valid, and he thus had priority over the other creditors. (*q*)

But if the person dealing with the company has notice of the irregularity, he is affected by it (*r*).

(*q*) See also *Dey* v. *Pullinger Engineering Co.* [1921], 1 K. B. 77 (where it was held that the company was bound by a bill of exchange drawn by its managing director, though he had not in fact authority to draw the bill); *Kreditbank Cassel* v. *Schenkers*, [1927] 1 K. B. 826; *Houghton & Co.* v. *Nothard, Lowe & Wills*, [1928] A. C. 1.

(*r*) *Howard* v. *Patent Ivory Co.* (1888), 38 Ch. D. 156, at pp. 170, 171.

CHAPTER V.

FORMATION OF A COMPANY.

Section 1.

The Preliminary Contract.

Very frequently a company is formed for the purpose of purchasing an existing business or property: then the promoters of the company are in this difficulty, they do not want to go to the expense of forming the company until they have a binding contract from the owner of the business (or vendor) to sell it to the company; but, on the other hand, the company cannot make a binding contract until it is incorporated.

Sometimes a preliminary contract is made between the vendor and some person who acts **as agent or trustee** for the company about to be formed.

The position of the agent is curious, because a person cannot act as an agent for another person who is not yet in existence; therefore—

(1) **The company,** when it comes into existence, **is not bound by the contract.**

Re English & Colonial Produce Co., [1906] 2 Ch. 435.

A solicitor, on the instructions of persons who became the directors of the company, prepared the Memorandum and Articles before its formation :—**Held,** the company was not liable to pay

the solicitor's costs, although it had taken the benefit of his work (see the judgment of VAUGHAN WILLIAMS, L.J., at p. 441 (*a*)).

(2) **The company cannot sue the vendor on the contract.**

Natal Land Co. v. Pauline Colliery Syndicate, Limited, [1904] A. C. 120.

The N. Company agreed with Mrs. C., as agent of the Pauline Syndicate before its formation, that the company would grant a lease of a mine to the syndicate. The syndicate was registered, and discovered a seam of coal. The company refused to carry out the contract:—**Held**, there was no binding contract between the company and the syndicate.

And (3) **The agent remains personally liable on the contract, even if it is afterwards ratified by the company** (*Kelner* v. *Baxter* (1866), L. R. 2 C. P. 174).

Hence it is usual to provide in the contract that

(a) If the company adopts the agreement, the agent's liability shall cease; and

(b) If the company does not adopt the agreement within (say) two months, either party may rescind the contract; so that the agent escapes liability in either event. Then, as soon as the company is incorporated, it enters into a **new agreement** with the vendor to carry out the terms of the preliminary agreement.

Such a new agreement may be implied by the acts of the company (see *Natal Land Co.* v. *Pauline Colliery Syndicate*, [1904] A. C., at p. 126).

(*a*) Expenses of registration cannot be recovered from the Company in the absence of an express or implied request on the part of the Company that they should be paid (*National Motor Mail Coach Co.*, [1908] 2 Ch. 515).

Note, that the agent could probably sue the vendor on the contract and recover damages, if he has suffered any.

If the contract was made with a "Trustee" for the company, the position is similar; for a trustee is personally liable on contracts which he makes on behalf of the beneficiary, and the company is not bound by the contract and cannot enforce it or ratify it; since the person who purported to act as trustee for the company before it was formed could not have had any authority to do so (*b*).

As a consequence of these difficulties it is now becoming the more usual practice not to make any contract before the company has been incorporated; but to agree the form of a draft contract to be entered into by the vendor and the company after incorporation.

SECTION 2.

Registration.

(a) New Companies.

Persons wishing to form a new company must produce to the Registrar of Companies

(1) The Memorandum of association (*c*).

(2) The Articles of association (*c*).

(3) A list of the persons who have consented to become directors (*d*).

(4) A statutory declaration that the requirements of the Act have been complied with (*e*).

The proper stamp duties must be paid and the

(*b*) *Northumberland Avenue Hotel Co.*, 33 Ch. D. at p. 20.
(*c*) Companies Act, s. 12.
(*d*) Companies Act, s. 140 (3).
(*e*) Companies Act, s. 15 (2).

Registrar enters the name of the company on the register.

The company then comes into existence; but it cannot commence business until it has complied with section 94 of the Companies Act (see p. 76), unless it is a private company (see Chapter XVII.).

(b) Existing Companies.

Any company which existed before the Companies Act (1862) may be registered under the Companies Act (*f*), if it has seven members, except—

(1) an unregistered company after a winding up has commenced (*g*);

(2) companies (other than joint stock companies) in which the liability of members is limited by Act of Parliament.

Existing companies are not bound to register under the Act.

Form.

Such a registration can take place with the consent of a three-quarters majority of members present at a general meeting of the company (*h*), and the following information must be supplied to the Registrar :—

1. A list of members.
2. A copy of the charter or deed of settlement of the company.
3. The amount of the nominal capital.
4. The number of shares.
5. The name of the company, with the addition of the word "limited" (*i*).

(*f*) Companies Act, s. 321.
(*g*) *Hercules Insurance Co.* (1871), 11 Eq. 321.
(*h*) Companies Act, s. 321 (1) (vi).
(*i*) Companies Act, s. 323.

SECTION 3.

The Certificate of Incorporation.

When the Memorandum has been signed and the fees paid, the registrar enters the name of the new company in the register, and hands over a certificate of incorporation in the following form:

"I hereby certify that Blank Company, Limited, is this day incorporated under the Companies Act, 1929, and that the company is limited."—Given under my hand at London this 4th day of September, 1929.

The certificate is conclusive.—By the Companies Act, 1862, s. 18, the certificate was declared to be conclusive evidence that the Act had been complied with. But doubts arose on the construction of this section, and it was held that if it was legally impossible that the company could have been properly registered, the court could go behind the certificate, and hold that there never had been a company.

National Debenture Corporation, [1891] 2 Ch. 505.

Held, if only six members really signed the Memorandum, the certificate would not be conclusive.

This was doubted in *Ladies' Dress Association* v. *Pulbrook*, [1900] 2 Q. B. 381.

In order to avoid such doubts, the wording of section 18 was altered, and now the certificate is conclusive evidence that all the requirements of the Companies Act, in respect of **registration and of matters precedent and incidental** thereto have been complied with, and that the association is a company **authorised to be registered, and duly registered** under the Companies Act (*j*).

(*j*) Companies Act, s. 15. See also *Re Walker & Smith, Limited* (1903), 88 L. T. 792, where an invalid reduction of capital was held valid because the registrar had certified it, and *Jubilee Cotton Mills* v. *Lewis*, [1924] A. C. 958.

The certificate is conclusive evidence that the company was formed on the date appearing on the certificate, and the company is taken to have been in existence during the whole of the day (*k*).

A company registered outside Great Britain (*l*) must file with the registrar

(a) a copy of its charter or memorandum and articles;

(b) a list of directors;

(c) the name of a person on whom process may be served;

(d) a copy of a balance sheet in the same form as a company under the Companies Act (*m*).

(*k*) *Re Jubilee Cotton Mills*, [1923] 1 Ch. 1.
(*l*) Companies Act, ss. 343, 344.
(*m*) Companies Act, s. 347.

CHAPTER VI.

THE PROMOTER AND THE PROSPECTUS.

Section 1.

The Promoter.

The term "promoter" is not a term of law, but of business, usefully summing up in a single word a number of business operations familiar to the commercial world, by which a company is brought into existence (*a*).

A **promoter** is "one who undertakes to form a company with reference to a given object, and to set it going, and who takes the necessary steps to accomplish that purpose" (*b*). He is not a trustee or agent for the company, for it has not yet come into existence; but he stands in a fiduciary relation towards it and is liable to refund secret profits, etc., in the same way as a director.

If, therefore, the promoter wishes to sell his own property to the company, he should either (i.) see that there is a board of independent persons appointed as directors of the new company, or (ii.) disclose all the facts to the public by means of a prospectus.

(*a*) *Whaley Bridge Co.* v. *Green* (1879), 5 Q. B. D. 111.
(*b*) *Twycross* v. *Grant* (1877), 2 C. P. D. 541.

A promoter cannot relieve himself of this liability by provisions to that effect in the Articles of the company (*d*).

If he acquires property after he has taken up the position of a promoter for a company, the facts may show that he acquired it as a trustee for the company, but apart from such facts, he may sell it to the company at a profit, provided he makes the proper disclosure (*d*).

SECTION 2.

The Prospectus.

A **prospectus** is usually a circular sent round by the promoters after the formation of the company to induce the public to take shares in the company. It is defined in the Companies Act as "any prospectus, notice, circular, advertisement, or other invitation, offering to the public for subscription or purchase any shares or debentures of a company" (*e*).

The object of a promoter in issuing a prospectus is to make it as attractive as possible.

The object of the legislature is to prevent the public from being misled and defrauded.

The promoter must take great care—

1. **Not** to make any untrue statements, because—
   (a) an allotment of shares may be set aside for fraud or misrepresentation; and
   (b) he may be sued for damages for fraud; and
   (c) he may be sued for compensation for mis-

(*d*) *Omnium Electric Palaces, Ld.* v. *Baines*, [1914] 1 Ch. 332, at p. 347.

(*e*) Companies Act, s. 380, as to what is an issue to the public, see p. 228.

representations under section 37 of the Companies Act.

2. **To disclose** all matters which he is bound to disclose by the Companies Act.

As to 1. Untrue statements. (a).—Rescission for fraud or misrepresentation.

Fraud.—A contract to take shares is governed by the same rules as other contracts, and therefore any person **induced by fraud** to take shares may rescind the contract, and have his name struck off the register. But he cannot both retain the shares and get damages (*f*).

Misrepresentation.—Any person who takes shares on the faith of statements contained in a prospectus may set aside the contract and apply to be struck off the register if those statements are false, even though they were made innocently.

But he must apply—

(1) within a reasonable time; and

(2) before proceedings to wind up the company have been commenced.

The misrepresentation need not be the **sole** reason which induced the applicant to apply for shares, if he really acted upon the misrepresentation (*Edgington* v. *Fitzmaurice* (1885), 29 Ch. D. 459).

Statements of **opinion** or exaggerated views of the advantages of a company are not enough to upset a contract to take shares.

(*f*) *Houldsworth* v. *Glasgow Bank* (1880), 5 App. Cas. 317.

But if they are so gross that, taking the whole thing together, there was really a misrepresentation of fact, the contract may be set aside.

Greenwood v. Leather Shod Wheel Co., [1900] 1 Ch. 421.

The prospectus stated in large type, "orders have already been received from the House of Commons," and "wheels for the trolleys in the House of Commons have been ordered, and are now in use."

In fact, the person who supplied refreshments to the House had one trolley with these wheels, but not ordered by the House of Commons:—**Held**, the prospectus was fraudulent and the contract void.

The prospectus is often **based upon the report of an expert** who has examined the property. If this report contains false statements of fact, a shareholder who relies on them may rescind his contract to take shares, if the directors have invited subscriptions for shares on the faith of the statements in the report, unless the directors have **clearly warned the public that they do not vouch for the accuracy of the report** (*g*).

Concealment in a prospectus may amount to fraud, but only if it is such a concealment as implies a falsehood (*h*).

(b) Damages for fraud.

In *Derry* v. *Peek* (1889), 14 App. Cas. 337, it was held that a director was not liable in damages for false statements in a prospectus if he honestly believed them

(*g*) *Mair* v. *Rio Grande Rubber Estates*, [1913] A. C. at p. 872. *Pacaya Rubber Co., Ld.*, [1914] 1 Ch. 542. *Reese River Silver Co.*, L. R. 2 Ch. 604.

(*h*) See *Christineville Rubber Estates*, [1911] W. N. 216, and *Shepheard* v. *Broome*, [1904] A. C. 342.

to be true, even though there was **no reasonable ground for his belief**; for the common law action of deceit will not lie unless "a man makes a statement to be acted upon by others, which is false, and which is **known by him to be false or is made by him recklessly** or without care whether it is true or false" (see p. 350 of the report).

In *Peek* v. *Gurney* (1873), L. R. 6 H. L. 377, it was held that the directors were not liable for false statements in a prospectus to a person who had bought shares in the market, because the prospectus was only addressed to the original allottees, and not to subsequent purchasers of the shares.

These rules still remain the law as to fraud or deceit generally; but after these decisions directors and promoters were subjected to the special liability in respect of compensation mentioned below.

(c) Compensation under section 37.

A **director or promoter is liable to compensate any persons who subscribe for shares on the faith of a prospectus** for damage sustained by reason of any untrue statement in it, unless—

(i.) he had reasonable grounds for believing it to be true; or

(ii.) he made the statement upon the authority of an expert whom he had reasonable grounds for believing to be competent; (*i*) or

(*i*) Directors are not entitled to rely on the statements of the vendor as an expert, *Adams* v. *Thrift*, [1915] 1 Ch. 557; affirmed by C. A., [1915] 2 Ch. 21.

(iii.) the statement was a correct copy of an official document.

If a director dies no action under this section can be brought against his personal representatives, *Geipel* v. *Peach*, [1917] 2 Ch. 108.

N.B.—A shareholder can often obtain rescission of his contract to take shares in cases where he cannot make the directors liable for damages or compensation.

As to 2.—Matters which must be disclosed.

These are now contained in s. 35 and the 4th Schedule of the Companies Act.

The abuses intended to be remedied by the legislature were—

1. Material facts were frequently suppressed.

2. The directors often had no stake at all in the company.

3. Many companies proceeded to business, even if only a few of the shares had been taken up and the company failed for want of sufficient capital.

4. Much of the money subscribed went to pay purchase money inflated by profits of some syndicate who sold the property to the promoters.

The legislature has attempted to remedy these abuses by the following provisions:—

(a) If the company issues a prospectus, then the prospectus must be dated, a copy must be signed by every director or proposed director (*k*), and filed with the registrar, and the prospectus must state on the face of it that a copy has been so filed.

(*k*) S. 34.

The prospectus must state (*l*)—

*(1) **The contents of the Memorandum**, with the names, descriptions, and addresses of the signatories.

(2) **The number of "founders" or deferred shares (if any).**

*(3) **The number of shares (if any) fixed by the Articles as the qualification of a director and the remuneration of the directors.**

*(4) **Names, descriptions, and addresses of directors.**

(5) **Where shares are offered to the public, the "minimum subscription,"** *i.e.*—

(i) the minimum amount which in the opinion of the directors must be raised by the issue to provide for the purchase price of any property to be acquired, preliminary expenses, underwriting commissions, repayment of money borrowed for these purposes and working capital; and

(ii) the amounts to be provided from other sources for these purposes.

(6) **The amount payable on application and allotment** on each share, and in case of a second or subsequent offer of shares, the amount offered on each previous allotment within the past two years and the amount allotted and the amount paid on the shares allotted (*m*).

(7) **The number of shares or debentures issued as fully or partly paid up otherwise than in cash.**

(8) **The names and addresses of the vendors and the amount payable to each.**

(9) **The amount of the purchase money, specifying the amount paid for goodwill.**

(10) **The amount of the underwriting commission (if any).** (See p. 185.)

*(11) **An estimate of the preliminary expenses.**

(12) **The amount paid to any promoter,** and the consideration for such payment.

(13) **The date of and parties to any material contract**

(*l*) S. 35 and 4th Schedule.

(*m*) Default in disclosing the amount of previous allotments does not entitle an allottee to rescind his contract. *South of England Gas Co.*, [1911] 1 Ch. 573.

and a reasonable place where it may be inspected; but not if made—

(1) in the ordinary course of the company's business

or

(2) more than two years before the issue of the prospectus.

(14) **Names and addresses of the auditors (if any).**

*(15) **The interest of every director or promoter** in the promotion of or the property to be acquired by the company, and any sums paid to him to induce him to become or to qualify him as a director.

(16) **Where the shares are of more than one class, the rights of voting and the rights as to capital and dividend attached to the several classes of shares.**

(17) **Where the business has been carried on for less than three years, the time during which it has been carried on.**

The prospectus must also set out—

(1) A report of the auditors as to the profits of the company in each of the three years preceding the prospectus, and the rates of dividend paid on all classes of shares for the same period.

(2) A report by named accountants as to the profits during the same period of any business intended to be acquired.

The requirements of this schedule are set out in full in the appendix.

If a prospectus is issued more than two years after the company is entitled to commence business, none of the provisions marked * on pp. 66, 67 apply.

Contracts made more than two years before the prospectus need not be disclosed.

Any condition binding the applicant to waive the provisions of this section is void (*n*).

These requirements apply to every prospectus "issued" by or on behalf of a company or any person interested in the formation of a company.

"Issued" means shown to some persons (or possibly only one person) as members of the public for the purpose of inviting them to subscribe for shares on the terms of the prospectus (see *Nash* v. *Lynde*, below).

If the requirements of section 35 are not complied with, the omission may amount to a misrepresentation (see p. 62, *ante*), entitling the subscriber to obtain rescission of his contract to take shares; if not, the remedy for failure to comply with this section is not rescission (*o*), but damages against the directors or other persons responsible for the prospectus.

Nash v. Lynde, [1929] A. C. 158.

The directors of a private company prepared a document, which was in form an offer of shares to persons generally, and the jury found that it was "an offer of shares made to the public" (see p. 61). The document was not, however, advertised, but was shown to one person with a view to his joining the company and becoming a director.

The document omitted to state the number of shares allotted for a consideration other than cash.

Held, by the Court of Appeal (1) that the document was a prospectus which had been issued; (2) that the directors were liable in damages (£2000).

(*n*) Companies Act, s. 35 (2).
(*o*) *South of England Gas Co.*, [1911] 1 Ch. 573.

Held, by the House of Lords as to (1) that the document had never been "issued" as a prospectus.

As to (2) that this point did not arise, and the decision of the Court of Appeal must not be taken to be affirmed.

It should be noted that the Act does not say that the directors will be liable; but this seems to be implied from the fact that the Act provides as follows:—

A director is not liable if—

(1) he did not know of the matter not disclosed;

(2) the non-compliance arose from an honest mistake of fact on his part; or

(3) the non-compliance was not material, and the Court thinks that he ought to be excused.

Before 1929 these requirements were sometimes evaded as follows: The company, instead of itself issuing the prospectus and obtaining subscriptions from the public, would allot the whole issue to a syndicate or company, called an "Issuing House." The Issuing House then offered the shares for sale to the public by means of a prospectus. But now, by sect. 38, where a company allots shares or debentures with a view to their being offered for sale to the public, any document by which the offer to the public is made is to be deemed a prospectus issued by the company.

These provisions will *primâ facie* apply whenever—

(1) the prospectus is issued within six months after allotment; or

(2) the whole consideration for the allotment has not been received by the company.

Persons making the offer are to be liable as if they were directors, and the prospectus must also state—

(*a*) the net amount received by the company for the shares and debentures allotted;

(*b*) a place and time at which the contract with the Issuing House can be inspected.

(b) **If the company does not issue a prospectus.**

The company must, at least three days before allotment, file with the registrar a "**statement in lieu of prospectus**" (*p*) containing most of the information which would be required in the prospectus, in the form prescribed in the Fifth Schedule to the Companies Act (see Appendix A, p. 329).

If the company fails to file a statement in lieu of prospectus, it cannot allot any shares or debentures. The allotment, if made, is voidable if the allottee applies within one month after the statutory meeting; or in cases where there is no such meeting, within one month after allotment.

The Companies Act is silent as to the effect of untrue statements in the statement in lieu of prospectus, but apparently

(1) **If a person applying for shares inspects the statement in lieu of prospectus, the statement becomes the basis of the contract between him and the company,** and if it contains a false statement, he may have a right to rescind (*q*).

(2) A person who does not take his shares from the company, but buys on the market from the person to

(*p*) Companies Act, s. 40. This does not apply to a private company.

(*q*) *Blair Open Hearth Co.*, [1914] 1 Ch. 390, at p. 401.

whom they were allotted, has no remedy against the company (*r*).

(3) A person who subscribes for shares on the faith of a statement in lieu of prospectus cannot claim compensation under s. 37 (*s*).

(4) Any person who wilfully makes a false statement in a statement in lieu of prospectus is guilty of a criminal offence (*t*).

(5) All allotments of shares and debentures are not necessarily void merely because the contents of the statement are untrue or misleading (*u*).

The effect of the disclosures required by the Act is shortly as follows :—

(1) *The Contents of the Memorandum.* This shows the objects of the company and the amount of capital.

(2) *The Qualification of the Directors.*

This shows how far the directors are prepared to put faith in the company themselves.

It is usual to provide that no person shall be qualified to act as director unless he holds a certain number of shares. (See Art. 84 in the Form on p. 41.)

These sections do not make it **necessary** for the company to fix any such qualification ; but, if there is none, any person reading the prospectus can see that the directors have no personal interest at all in the success of the company.

By s. 140.—**A person cannot be appointed a director** of the company by its articles or **named as such in the prospectus** unless he has

(*r*) *Peek* v. *Gurney*, L. R. 6 H. L. 377 (cited p. 64, *ante*).
(*s*) See p. 64, *ante*.
(*t*) Companies Act, s. 362.
(*u*) *Blair Open Hearth Co.*, [1914] 1 Ch. 390.

(1) signed a consent to act, and

(2) signed the Memorandum for his qualification shares or a contract to take such shares **from the company** (*i.e.*, not as a present from the promoters); or

(3) made a statutory declaration to the effect that a number of shares sufficient for his qualification are registered in his name.

This does not apply to a private company, nor to a company which starts as a private company and then becomes a public company, and probably does not apply to a prospectus sent to existing shareholders or debenture holders only (*Burrows* v. *Matabele Gold Co.*, [1901] 2 Ch. p. 27).

The result of non-compliance is not stated in the Act. Probably the appointment is void, and the person responsible has committed a misdemeanour and is liable in damages (*x*).

By s. 141.—**A director must take up his qualification shares within two months**; and if he ceases to hold them, he vacates office.

(5) **The Minimum Subscription.**

The directors or promoters must determine beforehand what is the minimum amount of capital with which they can successfully carry on the business of the company. This is called the "**minimum subscription.**"

The amount of the minimum subscription must be stated in the prospectus (*z*) or in the statement in lieu of prospectus.

(*x*) Rawlins and Macnaghten, p. 203.

(*z*) The prospectus is for the purpose the particular prospectus on which the applicant relies (*Roussell* v. *Burnham*, [1909] 1 Ch. 127).

A business cannot as a rule be successfully worked without a certain amount of capital, and if a company starts with insufficient capital it is almost sure to meet with failure. Notwithstanding this, promoters of companies who had failed to obtain the necessary capital from the public, frequently persisted in the formation of the company, and thus caused almost inevitable loss to the persons who had subscribed for shares.

Sect. 85 of the Act of 1908 provided that no shares offered to the public should be allotted until the "minimum subscription" has been subscribed and the amount due on application (which must not be less than five per cent. of the value of each share) had been paid in cash (*a*).

This led to a practice of fixing seven shares as the minimum subscription, and the provisions of the Act became useless. Sect. 39 now provides that the minimum subscription is to be the amount required to provide for the matters set out in para. (5) of the 4th Schedule, see *ante*, p. 66.

Cheques received by the company in good faith amount to payment if the directors have no reason to suspect that they will not be paid.

If the minimum subscription has not been subscribed within 40 days after the issue of the prospectus, all money received from applicants must be repaid, and if it is not repaid within 48 days after the issue of the prospectus, the directors become liable to repay it with interest at 5 per cent., unless they can prove that the loss of the money was not due to their negligence or misconduct (*b*).

On any allotment of shares after the first allotment of shares offered to the public, the amount paid on application must not be

(*a*) *Mears* v. *Western Canada Pulp Co.*, [1905] 2 Ch. 353.
(*b*) S. 39 (4).

less than five per cent., but the rest of this section does not apply.

This section does not apply to the allotment of debentures, or to a private company.

Any clause in the prospectus waiving the provisions of this section is void (*c*).

By s. 94.—**The company cannot commence business until** (a) **shares payable in cash up to the amount of the minimum subscription have been allotted** (*d*), (b) every director has paid on every share, which he is liable to pay for in cash, the same amount as members of the public must pay on application and allotment, (c) a statutory declaration has been made to this effect, and (d) if there is no prospectus, a statement in lieu of prospectus has been filed.

Contracts made by the company before it has become entitled to commence business are provisional only, and do not become binding **on the Company** (*e*) until it has become entitled to do so.

This includes preliminary contracts which have been adopted by the company; and probably even the contract of the signatories of the Memorandum to take shares in the company is void if the company never obtains the minimum subscription (*Re Otto Electrical Co.*, [1906] 2 Ch. 390).

(7) **Shares and debentures issued for a consideration other than cash** (see pp. 91 and 92).

(8) **The names of the vendors and the amounts payable to them.**

(*c*) S. 39 (5). (*d*) Penalty, £50 per diem.
(*e*) S. 94 (4). These words seem to imply that the contract is binding on the parties other than the company.

The purchase money paid to each vendor must be disclosed in the prospectus whether he sells directly to the company or sells to other persons who sell to the company. In the latter case the purchase money paid to each vendor must be shown.

A person is a vendor under this section if he has entered into any contract, absolute or conditional, to sell or buy or for an option to buy any property to be acquired by the Company, and

(*a*) the purchase money is not fully paid when the prospectus is issued;

or (*b*) the purchase money is payable wholly or partly out of the proceeds of the issue of shares offered by the prospectus;

or (*c*) the contract depends on the result of that issue (*f*).

Brookes v. Hansen, [1906] 2 Ch. 129.

In May, 1901, Wheeler agreed to sell certain patent rights to a syndicate for £15,000. This sum was paid to Wheeler before the end of May. On June 1st, 1901, the syndicate agreed to sell the patents to a company for £58,500 and the company issued a prospectus on the same day which did not refer to the contract between Wheeler and the syndicate:—**Held,** Wheeler was not a vendor, and this contract need not be set out.

Held also, that if the £15,000 had not been paid to Wheeler before June 1st, 1901, and the company had agreed to buy from the syndicate the **benefit of its contract** with Wheeler, then Wheeler would have been a vendor. The test seems to be whether any of the cash paid by the company is paid to the original vendor or not.

(*f*) Sched. IV. Part III. (2).

(9) The amount of the purchase money specifying the amount paid for goodwill.

It is very difficult to determine the value of the goodwill of a business, and large sums are often paid for goodwill which are soon afterwards written off as having been entirely lost.

(10) Underwriting Commission.

This clause only requires the amount or rate of commission to be stated. The dates of and parties to the underwriting contracts are also required under Clause (13), and if any director is interested in the underwriting, this should be disclosed under Clause (15).

Where the underwriting is undertaken by a company or syndicate, the Act does not require the capital of the syndicate to be stated. This has led to a practice under which the promoters or their friends form a syndicate with a capital so small that it could not possibly pay for the shares it agrees to underwrite, and consequently, if a large number of the shares are not taken up, the syndicate cannot pay the calls and the underwriting becomes a farce. Directors of a company should therefore insist that any syndicate which underwrites the shares must have a sufficient subscribed capital. If it has not, they may be liable for negligence.

It is not necessary to disclose the commission paid to sub-underwriters.

See generally as to underwriting, Chapter XIII.

(11) An estimate of the preliminary expenses.

These expenses include the stamps payable on the formation of the company, legal costs and other expenses connected with the preparation of the Memorandum and Articles and other documents and advertising the prospectus.

(12) The **amount paid to any promoter.** As to promoters, see p. 60.

(13) The dates of and parties to every material contract.

A somewhat similar provision was contained in the Companies Act, 1867, s. 38, and was interpreted to include all contracts which imposed any obligation on the company, or which were entered into by promoters (or persons who afterwards became promoters) relating to the affairs of the company, and which were material for an intending shareholder to know.

Gluckstein v. Barnes, [1900] A. C. 240.

The old "Olympia" Company was in difficulties, and the debentures were worth very little. X. Y. and Z., as trustees for a syndicate, bought up a great number of debentures very cheap. Then they bought "Olympia" for £140,000, and sold to a new company for £180,000. The result of this was, that the debentures were paid in full out of the £40,000, and X. Y. and Z. made a profit on the debentures of £20,000.

X. Y. and Z. became directors of the new company. They disclosed their profit of £40,000, but not their profit of £20,000 : —**Held,** there was not sufficient disclosure, and X. Y. Z. must pay the £20,000 to the company.

If any contract required to be disclosed by the Act (*g*) is not disclosed, any person who has taken shares on the faith of the prospectus can claim damages from the directors who issued it; but only if he can show—

(1) that the undisclosed contract was a material one; and

(2) that he has suffered damage by its non-disclosure (*h*).

(14) **The names and addresses of the auditors.**

(*g*) *Re Wimbledon Olympia, Limited*, [1910] 1 Ch. 630.
(*h*) *Nash* v. *Calthorpe*, [1905] 2 Ch. p. 237. And see *Macleay* v. *Tait*, [1906] A. C. 24; and *Marshall* v. *Morrison*, [1907] W. N. 29.

It is the business of the auditors to check the accounts of the company and report to the shareholders (see p. 237, *post*); it is therefore important that they should be reliable persons.

(15) **The interest of every director** in the promotion of or in the property proposed to be acquired by the Company.

If the director is a member of a firm, any such interest acquired by the firm must be disclosed.

(16) **Rights of voting at meetings and other rights attached to various classes of shares.**

The Act of 1908 only required the voting rights to be disclosed.

A "**waiver clause**" was sometimes used to defeat the provisions of some of the earlier Acts. A clause was inserted in the prospectus that applicants should waive the provisions of the section; but this "waiver clause" had to be straightforward and clear. If so, it was good and effectual to cover *bonâ fide* slips (*i*). If it was "tricky" it was void.

Greenwood v. Leather Shod Wheel Co., [1900] 1 Ch. 421.

The same prospectus as is mentioned on p. 63, contained the clause: "There may be contracts which perhaps ought to be referred to" . . . "any subscriber shall be deemed to have waived all rights to further particulars of these contracts":—**Held**, "the waiver clause is clearly tricky and fraudulent. It is printed in small type so as to escape attention. It is worded so as to conceal and not to afford notice of the contract of December 3rd to which the promoter was a party." The clause was void (*j*).

All such **waiver clauses are now void** (*k*).

(*i*) *Macleay* v. *Tait*, [1906] A. C. 24.
(*j*) And see *Watts* v. *Bucknall*, [1903] 1 Ch. 766.
(*k*) Sect. 35 (2).

Before 1929 an **"abridged prospectus"** was often advertised in newspapers, accompanied by a form of application for shares. This is now prohibited. Sect. 35 (3) provides that it shall not be lawful to issue a form of application for shares or debentures unless it is accompanied by a full prospectus complying with the Act.

This does not apply to underwriters or to shares not offered to the public.

In any case, it is probable that such an "abridged prospectus" is really a "prospectus" within the meaning of the Act, and any provisions framed with a view to preventing this result are probably void as waiver clauses under section 35 (2).

If, therefore, the applicant reads and relies upon the abridged prospectus and does not read the full prospectus, there would be a considerable risk of his being able to recover from the directors any damage he has suffered (*l*).

Companies sometimes evaded these provisions by being registered outside the United Kingdom.

Any such company must now, if it has a place of business within the United Kingdom, file with the registrar a copy of its charter or Memorandum and Articles, a list of its directors, and the other matters set out in section 344 of the Companies Act.

Any company incorporated in a British possession which has filed these particulars may now hold lands in the same way as a company incorporated in England notwithstanding the Statutes of Mortmain (*m*).

House to house canvassing for subscriptions for shares is forbidden (*n*).

The form given below is a form of prospectus actually used by an existing company before the Act of 1929 (with some modification and omissions). The student should read this form and ascertain whether, and, if so, how, the provisions of the Act have been complied with.

(*l*) *Roussell* v. *Burnham*, [1909] 1 Ch. 127; *Army and Navy Society* v. *Craig* (1891), 8 T. L. R. 227.
(*m*) Companies Act, s. 345.
(*n*) Sect. 356.

Form of Prospectus.

A copy of this prospectus has been filed with the Registrar of Companies.

BLANK COMPANY, LIMITED.

(Incorporated under the Companies (Consolidation) Act, 1908.)

Capital - - - - £140,000

Divided into

	£
14,000 6 per cent. cumulative preference shares of £5 each	70,000
14,000 ordinary shares of £5 each	70,000

Issue of

12,000 6 per cent. cumulative preference shares of £5 each	60,000
10,500 ordinary shares of £5 each	52,500
	£112,500

To be paid up as follows:

£	s.	d.	
1	0	0	per share on application.
1	0	0	„ „ allotment.

and the rest in calls as required.

(Or the whole amount may be paid on application.)

The preference shares are entitled to a preference as to capital and dividend over the ordinary shares. It is intended to pay dividends thereon half-yearly on June 15th and December 15th.

Directors:

A. Smith, of , Director of Companies.
J. G. B., of , Brewer.
R. C., of , Brewer.

Solicitors:

G. F. & Co.

Bankers:

C. & C. Bank.

Auditors:
G. H. & Co. of

Secretary and Offices:
J. King,
Fleet Street, E.C.

PROSPECTUS.

This company has been formed to acquire, as from July 6th, 1927, the whole of the business of Jones & Sons, established upwards of 100 years.

The property acquired by the new company comprises:

(a) The freehold brewery and maltings known as Blank Brewery.
(b) Ninety-nine freehold licensed houses.
(c) Ten leasehold licensed houses.
(d) Dwelling-houses, shops, cottages, stabling, and valuable land.

The brewery premises cover a large area, and are in good and substantial repair. There are two good maltings of 90 and 30 quarters capacity respectively. The plant is equal to 30 quarters. The brewery is well found in loose and moveable stocks, casks, drays, and other appliances.

The books and accounts of Jones & Sons show the profits to have been as follows:

	£	*s.*	*d.*
For the year ending October, 1925	17,402	18	11
„ „ 1926	15,668	2	0
„ „ 1927	16,714	7	0

(Or an average of £16,595 3*s.* 2*d.*)

The purchase price of the properties to be acquired, including the two properties mentioned, has been fixed by the vendors, Messrs. B. and I., of , at £211,591 5*s.* 6*d.* payable as to £100,000 by the allotment of first mortgage debenture stock of that amount, and the balance in cash. The price for the loans, stocks, book debts, casks, horses, drays, etc., has been fixed by valuation at £9504 3*s.* 5*d.* The properties acquired have been examined and reported upon for the purposes of this purchase by Mr. A. Smith, managing director of the Thames Brewery Co., Limited, and a director of this company, as

being of a value in excess of the purchase consideration, apart rom any goodwill attaching to the brewery. No part of the purchase price is, therefore, paid in respect of goodwill.

The properties are sold to this company by Messrs. B. and I., of , who recently purchased them from Jones & Sons, Limited, for the sum of £202,591 5*s.* 6*d.*

The company will pay all the preliminary expenses relating to the formation of the company, the issue of this prospectus, the preparation of the contracts hereafter mentioned, the registration of the company, and the fee of Mr. A. Smith, one of the directors, for his services in negotiating the purchase and reporting upon the properties amounting to £1000.

The whole of such preliminary expenses are estimated to amount to £3000.

The following contracts have been entered into:

1. Dated August 20th, 1926, between Thomas Jones of , on behalf of Jones & Sons, Limited, of the one part, and J. G. B. and A. W. I. of the other part.

2. Dated September 16th, 1926, between the said B. and I. of the one part, and this company of the other part.

There is also a verbal contract made in or about the month of July, 1926, between the said Messrs. B. and I. and the said A. Smith for payment to him of the fee above mentioned.

Mr. J. G. B. is interested in the sale as partner in the firm of B. and I.: Mr. A. Smith is interested to the extent of the receipt of the fee above mentioned.

The articles of association provide as follows:

The qualification of every director shall be the holding in his own right of shares in the company of £500 nominal value.

The directors respectively shall be entitled to be repaid out of the funds of the company all personal expenses incurred in or about the business of the company, and in addition thereto, each of the first directors (other than the managing director) shall be paid for his remuneration out of the funds of the company at the rate of £100 per annum.

The minimum subscription of shares upon which the company will proceed to allotment is £20,000, but the whole of the present issue has been underwritten by Messrs. B. and I. in consideration of the sum of £6000, part of the sum of £211,591 5*s.* 6*d.* payable to them by the company as above mentioned.

On a show of hands each member present in person shall have one vote, and on a poll each member present in person or by proxy shall have one vote for each ordinary share held by him, and one vote for every five preference shares held by him.

A copy of this company's memorandum of association will be found printed in the fold of this prospectus, and forms part thereof.

Copies of the above-mentioned contracts, auditor's certificate, and the memorandum and articles of association can be seen at the offices of the solicitors to the company before the closing of the list of applications.

The company will pay a brokerage of one-half per cent. on all allotments made in respect of applications bearing brokers' stamps. Application for a settlement and quotation for this issue of preference and ordinary shares will be made in due course.

If no allotment is made, the deposit will be returned in full by post, and where the amount allotted is less than that applied for the available balance will be appropriated for the payment due on allotment, and any excess returned by post to the applicant.

Prospectuses and forms of application may be obtained at the offices of the company, or from the solicitors, bankers, brokers, and auditors.

September 16*th*, 1927.

(One copy is signed by all the directors.)

MEMORANDUM OF ASSOCIATION OF BLANK COMPANY, LIMITED.

Here follows the form of Memorandum of Association similar to that set out on p. 13.

CHAPTER VII.

MEMBERS OR SHAREHOLDERS.

SECTION 1.

How Persons may become Members.

PERSONS may become members of a company in any of the following ways:

(1) Persons who sign the Memorandum are **deemed** to have agreed to be members, and **on the registration of the company** must be put on the register of members (*a*).

(2) Persons who have agreed to become members, either—

(a) by applying for an allotment of shares, or

(b) by taking a transfer from a member,

become members **when entered on the register of members.**

(3) A person who acts as director is sometimes deemed to have agreed to take his qualification shares (*Salton* v. *New Beeston Co.*, [1899] 1 Ch. 775).

As to 1.—Neither allotment nor registration is necessary to make a subscriber to the Memorandum a member of the company.

Every subscriber to the Memorandum must take the shares for which he subscribed, **and pay for them**, and

(*a*) Companies Act, s. 25.

he is only excused if **all** the shares have already been taken (*Tuffnell's Case* (1883), 29 Ch. D. 421).

If the company never becomes entitled to commence business, he can probably get his money back on the ground that the contract is void (*b*).

He must take them **from the company**:—(otherwise the first subscriber might take his one share and transfer it to the second, and so on), for **the same shares cannot be made to do double duty.**

This rule occasionally led to hardship before the Act of 1900; for a vendor who agreed to take shares as part of the purchase money, and in ignorance signed the Memorandum for those shares, found himself bound to take them twice over (*d*). But this decision depended on section 25 of the Companies Act, 1867, which was repealed by the Companies Act, 1900. Even now it is safer to provide expressly in the Articles that the shares to be allotted in payment of the purchase money are the same as those in respect of which the Memorandum is signed, and it is better to avoid the question by the vendor not signing the Memorandum at all, or by his signing for one share only.

As to 2.—A person who agrees to become a member (*e*), does not become a member until his name is put on the register. But he is entitled to specific performance of the company's agreement to make him a member.

Rectification of the Register.

The register is only *primâ facie* evidence; thus, if a person who has agreed to become a member is

(*b*) See *Re Otto Electrical Co.*, [1906] 2 Ch. 390.

(*d*) *Re Ebenezer Timmins & Sons, Ld.*, [1902] 1 Ch. 238, and see *re Wilkinson Sword Co.*, [1913] W. N. 27, where the difficulty was surmounted by registering by leave of the court a memorandum operating as a filed contract.

(*e*) For rules as to a contract to take shares, see p. 96.

not put on the register the court may rectify the register on the winding up of the company (*Arnot's Case* (1887), 36 Ch. D. 702, at p. 707); and a person who is wrongfully removed from the register, remains a member (*Barton* v. *London and North Western Rail. Co.* (1889), 24 Q. B. D. 77): and if a person who has not agreed to take shares is put on the register, he is not a member (*Ormerod's Case*, [1894] 2 Ch. 475); and if he has been induced to take the shares by misrepresentation, the register can be rectified, if he applies to the court within a reasonable time after discovering the misrepresentation (*f*).

The applicant must prove by direct evidence that the statements were false, and he is not entitled to rely on admissions made by the chairman of directors at a meeting of shareholders (*g*) or on the report of an expert employed to report to the company (*h*).

Where there are no directors the court may appoint some person to rectify the register (*hh*).

SECTION 2.

Who may become a Member.

(1) **A company** may become a member of another company, if it is authorised by its Memorandum to take shares, or if it takes the shares in payment of a

(*f*) Such an application may be made by the company itself *Re London Electrobus Co.*, [1906] W. N. 147.

(*g*) *Devala Provident Gold Co.*, 22 Ch. D. 593. This decision was based on the theory that the chairman was an agent reporting to his principals, viz. the shareholders. This view is difficult to reconcile with *Percival* v. *Wright*, [1902] 2 Ch. 421, where it was held that the directors are not agents for the individual shareholders, and see *Djambi Rubber Estates*, note (*h*) below.

(*h*) *Djambi Rubber Estates, Ld.*, [1912] W. N. 192. If the directors in their report to the shareholders admit the truth of the expert's report, such admissions may be evidence against the company. S. C. 107 L. T. at p. 632, and see 29 T. L. R. 28.

(*hh*) *Manihot Rubber Plantations*, 63 Sol. Jo. 827.

debt by way of compromise (*i*) (*Lands Allotment Co.*, [1894] 1 Ch. 616, at p. 630).

But a company cannot purchase its own shares and become a member of itself, even if expressly authorised so to do by its Memorandum (*j*).

Nor can it now lend money to any one for the purpose of purchasing its shares (*k*).

(2) **An infant** may take shares, subject to a right to repudiate them on attaining full age.

Hamilton v. Vaughan Sherrin Co., [1894] 3 Ch. 589.

Miss H. (aged eighteen), applied for twenty £5 shares, and paid £1 each on allotment. No dividends were paid. Six weeks later she repudiated the shares:—**Held,** she could repudiate all liability.

But the infant cannot recover any money paid for the shares unless there has been a total failure of consideration, *e.g.* if the shares were absolutely worthless. (*l*)

(3) **A married woman** even before 1882 could hold shares as her separate estate. If she held them otherwise, her husband was liable for calls.

Since the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), a company may (if its Articles so provide) refuse to register a married woman as a member, if there is any liability on the shares.

(4) **A person who lends money to the company on a mortgage of its shares,** may become liable as a member in respect of those shares.

Addison's Case (1870), 5 Ch. Ap. 294.

A. lent the company £500 by taking 100 £5 shares and paying

(*i*) See Companies Act, s. 116, as to the way in which such a company can vote.

(*j*) *Trevor* v. *Whitworth* (1887), 12 A. C. 409.

(*k*) Sect. 45. There are some exceptions in favour of employees, etc.

(*l*) *Steinberg* v. *Scala* (*Leeds*), *Ld.*, [1923] 2 Ch. 452, overruling *Hamilton* v. *Vaughan Sherrin Co.* (*above*), unless that case is distinguishable on the ground that the shares were worthless.

for them, with an agreement that the money was to be paid back on one month's notice. A. gave the notice, and the company repaid the £500. A. transferred the shares to a **nominee of the company**:—**Held,** the company had no power to take back its own shares. A. was liable to pay £500 in respect of them.

(5) **A person who takes shares in the name of a fictitious person,** becomes liable as a member.

Re Central Klondyke Gold Mining Co., W. N. (1899), 1, 2.

S. carried on business under an assumed name; he took shares in that name and became bankrupt. His trustee tried to avoid liability as a shareholder:—**Held,** S. was liable.

Persons who do not become Members.

A person who agrees to **place** shares does not thereby agree to **take** shares, and therefore does not become a member.

Gorissen's Case (1873), L. R. 8 Ch. 507.

G. agreed that he would "place" 1000 shares for the company in consideration of being appointed its agent. The company registered G. as a holder of 1000 shares:—**Held,** G. was not a shareholder: he had not agreed to **take** shares, but only to find other persons who would take them.

A trustee with power of sale cannot sell the trust property for shares.

Re Morrison, [1901] 1 Ch. 701.

A testator gave all his property to trustees on trust to sell and invest in the ordinary trustee investments. He had an iron business. The trustees wished to turn the business into a company by selling it to a company in return for shares:—**Held,** the trustees had no power to do this, and the court had no power to sanction it.

By the Trustee Act, 1925, s. 57, the court is enabled to confer on trustees power to purchase shares in this way even though such a purchase is not authorised by the trust.

A person may cease to be a member by—

(1) transfer (but he remains liable to be put on the "B" list for one year, see p. 93);
(2) forfeiture (see p. 121);
(3) sale by the company under its lien (see p. 125);
(4) death (the shares are transmitted to his personal representatives);
(5) winding-up of the company.

SECTION 3.

Liability of Members.

(1) Apart from express agreement.

A shareholder must pay the whole nominal amount of his share **in cash.** Otherwise he will be liable for the amount unpaid on the winding-up of the company.

"**Cash**" means "such a transaction as would, in an action at law for calls, support a plea of payment."

Thus, if the company owes A. £100, and A. then agrees to take 100 £1 shares in satisfaction of the debt, the shares are fully paid up **in cash.** It is not necessary for A. to pay a cheque for £100 to the company, and for the company to hand it back to A.

Larocque v. Beauchemin, [1897] A. C. 358.

The company agreed to buy a paper mill for $35,000 in cash. The vendors then agreed to take 50,000 shares in the company, and paid for some of them in cash, but the rest were paid for by the company retaining part of the $35,000 which they owed the vendors. (NOTE.—This was not an agreement to sell for **shares,** but to sell for **cash,** and a later independent agreement to take shares):—**Held,** the whole 50,000 shares had been paid for in cash. Lord MACNAGHTEN: "If a transaction resulted in this, that there was on the one side a *bonâ fide* debt payable in money **at once** for the purchase of the property, and on the other side a *bonâ fide* liability to pay money **at once** on shares, so that, if bank notes had been handed from one side of the table to the

other in payment of calls, they might legitimately have been handed back in payment for the property, it appears to me that the Act does not make it necessary that the formality should be gone through of the money being handed over and taken back again."

Following on these decisions, the Courts have laid down the further rule that **shares cannot be issued at a discount,** *i.e.* a company cannot issue a £100 share with an agreement that only £75 shall be paid.

Ooregum Gold Co. v. Roper, [1892] A. C. 125.

The company was in difficulties. Its £1 shares stood at 2*s.* 6*d.* The directors issued 120,000 £1 shares with 15*s.* credited paid up, so that only 5*s.* was payable on each share :—**Held,** this would have been illegal, even if the Memorandum had expressly authorised it.

This can, however, now be done under s. 47 of the Act of 1929, provided the issue is authorised by resolution of a general meeting and sanctioned by the Court. At least one year must have elapsed since the company was in a position to commence business, and the shares must be issued within one month after the sanction of the Court has been obtained. Every subsequent prospectus and balance sheet must contain particulars of the discount allowed.

Another limited exception to the rule is the payment of underwriting commission which is allowed subject to the restrictions of s. 43, see p. 194.

Subject to these exceptions, shares must not be issued at a discount even by way of compromise (*Mother Lode Gold Mines* v. *Hill* (1903), 19 T. L. R. 341), nor in any other indirect way (*k*).

(*k*) Cf. *Bury* v. *Famatina Development Corporation,* [1909] 1 Ch. 754, [1910] A. C. 439.

Mosely v. Koffyfontein Mines, [1904] 2 Ch. 108.

The company proposed to issue debentures at a discount of 20 per cent. (*i.e.* to borrow money and to become liable to repay £100 for every £80 lent). Every holder of a debenture was to have the right to surrender every £1 worth of his debentures in return for a fully paid £1 share :—**Held,** this arrangement was not legal, as the result would be that a holder might get 100 £1 shares for £80.

(2) **Agreements to allot shares for a consideration other than cash.**—Shares may be issued as fully paid up as consideration for the sale of a business or other property sold to the company. The company must register with the registrar **within one month,** a contract in writing (or particulars of the contract if it is not in writing (*l*)) showing the title of the shareholder and the consideration that he gave for the shares (*m*).

By an Act of 1867 (*n*), the contract had to be registered **at once,** and if default was made, the shareholder was liable to pay for the shares in full.

Under the present Act, **if default is made,** the directors are subject to penalties, but the **liability of the shareholder is not affected.**

This is not an exception to the rule that shares must be fully paid up, but only to the rule that they must be paid **in cash.**

A person to whom shares are allotted as fully paid for a consideration other than cash may be held liable, whether or not a contract has been filed if (1) The contract is fraudulent, or (2) **the consideration is illusory,** or (3) the contract shows clearly **on the face of it** that the consideration was of a **less money value** than the shares allotted.

(*l*) S. 42 (2) of the Companies Act.
(*m*) S. 42 of the Companies Act.
(*n*) 30 & 31 Vict. c. 131, s. 25.

Hong Kong and China Gas Co. v. Glen, [1914] 1 Ch. 527.

Glen sold a concession to the company in consideration of 400 shares of £10 each and one fifth of any increase of the company's capital over £20,000:—**Held,** the 400 shares were fully paid, and the company was bound to allot to Glen one fifth of any increased capital: but such further shares would not be fully paid.

In any other case the court will not inquire into the adequacy of the consideration.

Re Wragg, Limited, [1897] 1 Ch. 796.

The vendors sold an omnibus business to the company for £46,000, of which £20,000 was to be paid in fully paid shares. The proper contract was filed. Evidence was given that the business was not worth anything like that amount:—**Held,** if there is fraud, the contract can be set aside; but apart from that, if a contract is filed, the court will not go into the adequacy of the consideration (*o*).

A person who has taken shares which are not properly paid up may be ordered to pay for the shares in full, though he was ignorant of the law. (*p*)

Shares are often allotted as fully paid in **consideration of services** performed by the promoters before the incorporation of the company.

(1) If these services have enhanced the value of any property sold to the company, the allotment is really a part of the consideration for the sale of the property and is valid.

(2) If no property sold to the company has benefited by the services, it is difficult to see what is the consideration for the allotment, for **past services are**

(*o*) And see *Mosely* v. *Koffyfontein Mines*, [1904] 2 Ch. at p. 116.
(*p*) *Re James Pitkin & Co.*, [1916] W. N. 112.

in law no consideration, unless rendered at request; and the company could not make such a request before it was incorporated, or ratify it afterwards (see pp. 54, 55). Such a consideration is therefore probably illusory.

(3) The company cannot agree that the liability on shares shall be wiped out in consideration of a promise of **future services** (*q*); but the company can agree to pay an immediate sum in cash for future services, and can then treat that sum as having been applied in payment of the liability on the shares (*r*).

A shareholder who transfers his shares remains liable to a certain extent; for on a winding-up two lists are made,

The "A" list or list of present members; and

The "B" list or list of persons who have ceased to be members within one year before the winding up.

Any person on the "B" list is liable to the extent of the amounts unpaid on his shares if—

(1) on the winding-up debts exist which were incurred while he was a member; and

(2) the members on the "A" list cannot satisfy the contributions required from them in respect of those shares.

(The position of persons on the "B" list is fully explained in *Helbert* v. *Banner* (1871), L. R. 5 H. L., at p. 34, and see p. 279, *post*.)

(*q*) *Pellatt's case*, L. R. 2 Ch. 527.
(*r*) *Gardner* v. *Iredale*, [1912] 1 Ch. 700, at p. 716.

SECTION 4.

Register of Members.

A company must keep a register of its members in one or more books (*s*).

The register must contain the name and address of each member, the amount and numbers of his shares, the date of acquiring them, and the amount paid up.

Unless the register is in the form of an index, there must also be an alphabetical index of members (*t*).

The register and index must be open to members gratis, and to non-members on payment of 1*s.* (*u*) and any person may demand a copy at 6*d.* per 100 words, but he may not make extracts (*Balaghat Co.*, [1901] 2 K. B. 665; overruling *Boord* v. *African, etc., Trading Co.*, [1898] 1 Ch. 596 (*x*).

Thus it is possible for any person who wishes to deal with the company to know who are the members, and for how much each is liable. It is generally safe to rely on the register, for although it is not conclusive, it is *primâ facie* (*y*) proof that the person on the register is the person liable. Thus, if a person allows himself to be on the register without objecting, he may be held liable; but if he was induced to become a member through fraud the contract is void, and if he did not discover the fraud until the winding-up, he is not liable.

(*s*) Companies Act, s. 95
(*t*) Companies Act, s. 96.
(*u*) *Ibid.*, s. 98.
(*x*) The motives of the person requiring the copy appear to be immaterial: *Davies* v. *Gas Light and Coke Co.*, [1909] 1 Ch. 248.
(*y*) See p. 85.

Baillie's Case, [1898] 1 Ch. 110.

B. wished to join an old society called the "Auctioneers Institute of the United Kingdom." A new society, "The Institute of Auctioneers and Valuers," persuaded him to join, pretending to be the old society :—**Held**, B. may be struck off the register.

"No notice of any trust shall be entered on the register" (*z*).—This means that the company need not take any notice of a trust even if it has constructive notice that there is a trust.

Simpson v. Molsons' Bank, [1895] A C. 270.

Trustees held shares in the bank under a will upon trust for S. The trustees transferred some of the shares to a person who was not entitled to them. A copy of the will was deposited in the bank, and the president of the bank was one of the executors of the will : but in spite of this the bank registered the transfer :— **Held**, the bank was not liable to S. (*a*).

But if the company deals with the shares itself (*e.g.* lends money on security of the shares) it will be bound by constructive notice in the same way as any other person dealing with the shares (*Longman* v. *Bath Electric Tramways, Ltd.*, [1905] 1 Ch. 646; *Mackereth* v. *Wigan Coal Co.*, [1916] 2 Ch. 293).

It does not mean that there cannot be a trust of shares. If there is, the trustee's name is put on the register, and he is the shareholder, and is liable for calls, even though the calls exceed the value of the trust property in his hands.

The Trustee, however, is entitled to be indemnified by the beneficiary. Thus, though the company looks only to the person on the register, it is the beneficiary who is **ultimately** liable for the calls; and possibly

(*z*) Companies Act, s. 101.
(*a*) And see *Rearden* v. *Provincial Bank*, [1896] 1 I. R. 532.

the company could sue the beneficiary direct (standing in the shoes of the trustee as to his indemnity).

The beneficiary (if he is *sui juris*) must indemnify the trustee for all calls paid even if they exceed the amount of the trust property.

Hardoon v. Belilios, [1901] A. C. 118.

A stockbroker took 500 shares in the name of his clerk. The broker received the dividends. The company called upon the clerk to pay £400 in calls. The clerk claimed that he was entitled to be indemnified by the broker; but the broker claimed that the indemnity must be limited to the value of the trust property (viz., the shares, which were valueless):—**Held**, the broker must indemnify the clerk by paying the whole £400 (*b*).

An **executor** of a shareholder is not personally liable to pay calls, unless he applies to be put on the register and is entered on the register as the holder of the shares.

If he does, he is entitled to an indemnity from the estate.

If he does not, the estate is liable to the company for calls.

Thus the estate is ultimately liable in either case.

An executor is entitled to be put on the register on proof of his title, and the company is not entitled to qualify the entry of his name on the register, by showing that he holds the shares in a representative capacity (*c*).

Another result of the rule that trusts shall not be put on the register is that where there are several

(*b*) But this does not apply to the trustees of a club where the understanding is that the members are not to be called upon to pay more than their subscriptions (*Wise* v. *Perpetual Trustees Co.*, [1903] A. C. 139).

(*c*) *Re T. H. Saunders & Co., Ld.*, [1908] 1 Ch. 415.

mortgages of the same shares, the mortgagee first in date has priority, not the first who gives notice to the company (*d*).

Joint holders.—The articles usually provide that where there are joint holders of shares the member whose name appears first on the register may vote. Joint holders are entitled to be entered on the register in any order they like. (*e*).

A company which transacts business in any of the colonies or dominions may keep a "Dominion Register," which will be part of its register of members (*f*).

SECTION 5.

Annual Returns and Lists of Members.

A company must every year make a return containing a list of its members and send it to the Registrar (*g*).

This list must contain the names, addresses, and occupations of all the members and the number of shares held by them, distinguishing between the shares issued for cash and those issued otherwise than for cash.

The "Annual Return" must also contain a summary called the "**Annual Summary.**"

This summary must specify and contain (*h*)—

(1) The names and addresses of the present members and of past members who were members at the date of the last return.

(*d*) See *Société Generale* v. *Walker* (1885), 11 App. Cas. 20.
(*e*) *Burns* v. *Siemens Bros.*, [1919] 1 Ch. 225.
(*f*) S. 103.
(*g*) Companies Act, s. 103.—The list must be made within 28 days after the first ordinary general meeting of the company and sent to the Registrar forthwith. It must be signed by a director or the manager or secretary.
(*h*) For the full list, see s. 103 in the Appendix and s. 144.

(2) The amount of capital and the shares into which it is divided.

(3) The number of shares taken since the commencement of the company.

(4) The amount of calls made on each share.

(5) The total amount of calls received and calls unpaid and of shares forfeited.

(6) The amount paid for underwriting shares and debentures since the last return.

(7) The number of share warrants and the number of shares comprised in them.

(8) A list of the directors, with particulars as to their names and nationality and former names in case of a change of name.

(9) The total amount of the debts secured by mortgages and charges.

(10) A balance sheet showing capital, liabilities, and assets, and a copy of the auditor's report.

This balance sheet must show with a reasonable amount of detail the general nature of the assets and liabilities of the company, and how the value of the assets has been arrived at as required by s. 124 (*i*).

(*i*) See pp. 229, 230, *post*, and *Galloway* v. *Schill & Co., Ld.*, [1912] 2 K. B. 354.

CHAPTER VIII

SHARES.

A SHARE is a right to receive a certain proportion of the profits of the company and of the capital of the company when it is wound up. The shares in a company are all numbered and the shares of each member are identified by these numbers.

SECTION 1.

Allotment.

Allotment is the appropriation to a person of a certain number of shares. This is usually done by a resolution of the Board of Directors.

An **application** for shares is an **offer** to take shares; **allotment** is the acceptance of that offer by the company.

The following is a form of application for shares:

No.

Form of Application for Ordinary Shares.

BLANK COMPANY, LIMITED.

(*Incorporated under the Companies Act*, 1929.)

Issue of 10,500 Ordinary Shares of £5 each.

To the above-named Company,

Gentlemen,

Having paid to your bankers the sum of £ , being a deposit of £1 per share on of the above-mentioned ordinary shares, I (we) **request** you to allot to me (us) that number of ordinary shares **upon the terms of your prospectus,** dated

September 1st, 1930, and I (we) hereby agree to accept the same or any smaller number that may be allotted to me (us) and to pay the balance, if any, due on allotment as provided by the said prospectus, and I (we) **authorise you to place my (our) name on the register of members** in respect of the shares so to be allotted to me (us).

To be written distinctly.
Name in full (Rev., Mr., Mrs., or Miss) .
Address in full .
Occupation .
Date , 19 .
Usual signature .

The allotment of shares is governed by the Companies Act, and subject to the provisions of the Act, by the common-law rules of contract.

By s. 39 no shares are to be allotted until the "minimum subscription" (*a*) has been subscribed and the amount due on application (which must not be less than five per cent. of the nominal amount of the shares) has been paid.

If the minimum subscription is not subscribed (*b*) within forty days after the issue of the prospectus, the money paid by subscribers must be returned forthwith. If not, the directors become liable to repay the money with interest at five per cent. from the end of forty-eight days.

The effect of allotting shares before the minimum subscription has been subscribed is—

(1) the allotment may be set aside within one month of the statutory meeting, or, where there is

(*a*) See p. 72.
(*b*) The application moneys are considered to be duly paid when the cheques have been received in good faith and the directors have no ground to suspect that they will not be paid. Companies Act, s. 39 (1).

no statutory meeting, within one month after allotment; and

(2) any director who has knowledge of the fact is liable to compensate the company or the members (*c*).

This section (except the provision as to the amount payable on application) does not apply to any allotment of shares after the first allotment of shares offered to the public.

A person to whom shares are allotted cannot safely deal with them until this section has been complied with, and the company has become entitled to commence business under s. 94 (see p. 74).

Finance and Issue, Limited v. Canadian Produce Co., Limited, [1905] 1 Ch. 37.

The company by mistake allotted 40,000 shares before the minimum subscription had been subscribed:—**Held,** the allottees have a right to rescind their allotments, but the company may give to every allottee an option to have the allotment cancelled and the money returned.

Subject to these provisions of the Companies Act the same rules apply to a contract to take shares as to any other contract. The application is the offer: the allotment is the acceptance.

There is no binding contract until the allotment has been made (by resolution of the Board), **and notice of allotment has been posted** or has reached the allottee in some other way.

(*c*) Companies Act, s. 41; and see *Burton* v. *Bevan*, [1908] 2 Ch. 240, where a director who was not present at the meeting at which the Board determined to go to allotment, was held not to be liable.

Dunlop v. Higgins (1848), 1 H. L. C. 381.

The allotment letter was delayed in the post. The allottee repudiated:—**Held**, the contract was complete when the allotment letter was posted.

Household Insurance Co. v. Grant (1878), 4 Ex. D. 216.

The same result where the letter was **lost** in the post.

But if the company is bound to allot a certain number of shares to a certain person, the contract is complete as soon as the application is posted.

Thus, suppose on an issue of further capital each holder of three old shares is entitled to two of the new shares (*i.e.*, two shares are offered to him on certain terms), the holder accepts the offer if he applies for the shares.

Notice of allotment is not necessary if the applicant states that he does not require notice.

If there is undue delay in the allotment, the offer lapses;

Ramsgate Hotel Co. v. Montefiore (1866), L. R. 1 Ex. 109.

M. applied for shares June 28th. Shares allotted November 23rd. M. refused to take them:—**Held**, the offer had lapsed before acceptance.

Conditional applications may be made;

Rogers' Case (1868), 3 Ch. App. 633.

R. wanted to be appointed local manager of a company. He was told he would have to take 100 shares. He applied for the shares, but was not appointed. He refused to take them:—**Held**, the application was conditional on his being appointed local manager, and he might refuse (*d*).

There is no contract if the applicant thinks he is applying to a different company: at any rate, if he is

(*d*) See also *Humphrey and Denman* v. *Kavanagh*, 41 T. L. R. 378.

induced to do so by fraud (*Baillie's Case*, [1898] 1 Ch. 110: see p. 94).

Shares in a company are personal property even though the company owns land (*e*). There are, however, some exceptions, *e.g.* the New River Company, a share in which is real property (*f*).

SECTION 2.

Certificates.

A member of a company has a right to a certificate of his shares, which must be prepared and ready for delivery within two months after the shares have been allotted or a transfer has been lodged (*g*).

The certificate is usually in the following form:

No.

Share Certificate.

BLANK, LIMITED.

THIS IS TO CERTIFY that Thomas Smith of (address) is the registered proprietor of one hundred ordinary shares of ten pounds each, numbered 2551 to 2650 both inclusive, in the above-named company, subject to the Memorandum and Articles thereof, and that up to this date there has been paid in respect of each such share the sum of five pounds.

Given under the common seal of the said company the 11th day of March, 1929.

JOHN JONES,
WILLIAM BROWN, } Directors.

SAMUEL GREEN, Secretary.

The object of a certificate is to enable a shareholder

(*e*) *Entwistle* v. *Davis* (1867), L. R. 4 Eq. 272.

(*f*) And may (subject to the Law of Property Act, 1925) be held by several persons as tenants in common (*Swayne* v. *Fawkener*, Showers, P. C. 207).

(*g*) Unless the terms of issue otherwise provide, Companies Act, s. 67. If the company refuses to register a transfer, it must give notice of its refusal within two months, s. 66.

on dealing with his shares to show at once a good *primâ facie* title.

It is therefore very difficult for a shareholder to deal with his shares without producing the certificate. Consequently, money is often lent to the shareholder, the lender taking possession of the certificate by way of security.

Loss of the certificate.—The articles usually provide that if a certificate is lost or destroyed the company will grant a new one, on satisfactory proof of the loss or destruction.

The effect of a certificate.—"A certificate . . . is a statement that the company asserts that the person to whom it is granted is the registered shareholder entitled to the shares included in the certificate, and . . . that the amount certified to be paid has been paid" (Buckley, 10th ed., p. 44).

The company may be liable in two ways:

1. Estoppel as to title.

If the company authorises the issue of a certificate stating that A. is the registered holder of certain shares, it cannot afterwards allege that A. is not entitled to those shares.

Dixon v. Kennaway, [1900] 1 Ch. 833.

Liddell was the secretary of a company and a stockbroker. Mrs. D. applied to L. for 300 shares in the company, and paid for them. Pitman (clerk to L.), who owned no shares, executed a transfer of 300 shares to Mrs. D.

The company, without requiring P.'s certificate to be produced, registered the transfer and gave Mrs. D. a new certificate:—**Held, the company is estopped from denying the validity of Mrs. D.'s certificate** and is liable to her in damages.

But if an officer of the company issues certificates

without the authority of the company, there is no estoppel.

Ruben v. Great Fingall Consolidated, [1906] A. C. 439.

R. lent money to the secretary of the company on the security of a share certificate. The secretary signed his own name on the certificate, affixed the seal of the company, and forged the names of two directors :—**Held,** the certificate was simply a forgery, and the company was not bound by it.

A company may however be liable in damages for the fraud of its officer committed in the course of his employment (*h*).

2. **Estoppel as to payment.**

If the certificate states that the shares are fully paid, the company cannot afterwards allege that they are not fully paid.

Bloomenthal v. Ford, [1897] A. C. 156.

B., the stationer of the company, agreed to lend £1,000 to the company on the security of 10,000 fully paid shares. The company issued 10,000 shares to him with a certificate on which they were described as fully paid. In fact, nothing had been paid. The company was wound up, and B. was put on the list of contributories :—**Held,** the company and its liquidator were estopped from denying that the shares were fully paid, and B. could be removed from the list.

Such a statement in the certificate would not help a person who knew that the shares were not paid for in full in cash (*i*).

The fact that the shareholder's partner is also a director of the company does not amount to constructive notice that the shares are not fully paid (*k*).

The certificate does not certify anything as to the equitable interest in the shares (*l*).

(*h*) *Lloyd* v. *Grace Smith & Co.*, [1912] A. C. 716; *Longman* v. *Bath Electric Trams*, [1905] 1 Ch. 646

(*i*) *African Gold Co.*, [1899] 1 Ch. 414.

(*k*) *Coasters, Ld.*, [1911] 1 Ch. 86.

(*l*) *Shropshire Union Railways* v. *The Queen*, L. R. 7 H. L. 496.

SECTION 3.

Transfer.

A shareholder has power to transfer his shares by s. 62 of the Companies Act.

The form of transfer is generally governed by the Articles. See Arts. 30 and 31 on p. 34.

In spite of any provisions in the Articles to the contrary, the transfer must be in writing, and the company must not register a transfer unless a proper instrument in writing has been delivered (*m*). A transfer need not be by deed, unless the articles expressly require a deed.

A transfer is usually in the following form :

(Stamp, £1.)

I, Thomas Smith (the transferor), of , in consideration of the sum of one hundred pounds paid by John Jones, of , hereinafter called the said transferee,

Do hereby bargain, sell, assign and transfer to the said transferee :

250 shares of £1 each, 15 shillings paid, numbered 404,201 to 404,450, both inclusive, of and in the undertaking called Blank, Limited.

To hold unto the said transferee, his executors, administrators and assigns, subject to the several conditions on which I held the same immediately before the execution hereof; and I, the said transferee, do hereby agree to accept and take the said shares, subject to the conditions aforesaid.

As witness our hands and seals, this twelfth day of March, in the year of our Lord one thousand nine hundred and twenty-four.

Certificate for 250 £1 shares forwarded to the Company's Office by Thomas Smith.

Signed [*Secretary.*]

(*m*) Companies Act, s. 63.

Signed, sealed, and delivered, by the above-named Thomas Smith, in the presence of—
Witness's—
Signature, A. BAKER.
Address .
Occupation .

THOMAS SMITH (*Seal*).

Signed, sealed, and delivered, by the above-mentioned John Jones in the presence of—
Witness's—
Signature, B. GREEN.
Address .
Occupation .

J. JONES (*Seal*).

The transfer is executed by the transferor, and handed to the transferee with the share certificate. The transferee executes it, and sends it to the company for registration. Until registration the transfer is not complete, but the transferee has a mere equitable interest. The company must register the transfer as soon as possible, having regard to any inquiries that may be necessary. If the officers of the company delay the registration unduly, the transferee may be given all the rights which he would have had if they had registered it within a proper time.

Sussex Brick Co., [1904] 1 Ch. 598.

Transferees of shares sent the transfer to the secretary. He replied that they would be submitted to the directors at the next board meeting. The company was wound up before the next meeting.

The liquidator refused to recognise the transferees as shareholders:—**Held,** the transferees must be registered "*nunc pro tunc*," *i.e.*, as if they had been registered when the registration ought to have been made.

Stamps.—A transfer for a nominal consideration was formerly stamped 10*s.*, but now by sect. 74 of the Finance (1909–10) Act, 1910, transfers operating as voluntary dispositions *inter vivos* become chargeable as if they were transfers on sale. (*n*)

If the transfer is for value it must be stamped *ad valorem* at the same rate as the conveyance of land under the Stamp Act, 1891, as altered by sect. 73 of the Finance (1909–10) Act, 1910 (*i.e.*, at the rate of 10*s.* for every £50 or part of £50, except that special rates are fixed for amounts below £300) (*o*).

Every shareholder has a right to transfer his shares, and the transfer will be good even if made to a man of straw, when the company is in difficulties, for the purpose of avoiding liability; provided that it is an absolute out-and-out transfer without any trust or reservation for the transferor (*De Pass' Case* (1859), 4 De G. & J. 544; *Discoverers Finance Corporation, Ltd., Lindlar's Case*, [1910] 1 Ch. 207 and 312).

But this right may be restricted by the regulations (*p*). A power is usually given to directors to refuse a transfer if calls are in arrear; and a discretionary power may be given them even to refuse any transfer without assigning reasons (*q*). See Art. 32 on p. 34.

The court will not interfere with their discretion unless it can be shown that they did not act *bonâ fide*.

(*n*) Except on an appointment of new trustees, or where no beneficial interest passes by the transfer (see s. 74 (6)).

(*o*) Finance Act, 1920, s. 36.

(*p*) *Attorney-General* v. *Jameson*, 1904, 2 I. R. 644.

(*q*) This is not allowed by the Rules of the Stock Exchange, and should not be inserted if a quotation on the Stock Exchange is desired.

Re Coalport China Co., [1895] 2 Ch. 404.

By Article 3 of the company, "The directors may refuse to register any transfer . . . where they are of opinion that the proposed transferee is not a desirable person to admit to membership." The directors refused to register a certain transfer, and gave no reasons:—**Held,** in the absence of evidence that the directors had not acted *bonâ fide*, their refusal could not be questioned.

Sometimes the Articles provide that the other shareholders shall be given the right of first refusal of the shares before they can be transferred to outsiders. Similarly an agreement, that on the bankruptcy of any member his shares shall be sold to certain persons at a certain price is good (*Borland* v. *Steel Bros.*, [1901] 1 Ch. 279. See p. 47).

The company cannot object to transmission on death or (subject to the last paragraph) on bankruptcy, even if calls remain unpaid.

Specific performance of a contract to transfer shares may be decreed, unless the directors (acting within their powers) refuse to register the transfer; then an action for damages will lie against the transferor.

Mortgage of Shares.—Shares are usually mortgaged by **depositing the share certificate** with the lender. Sometimes the borrower also executes a **blank transfer**: he fills up the transfer form but leaves the name of the transferee blank, and deposits the certificate and the transfer with the mortgagee. If the money is not paid within a reasonable time, the mortgagee may put in his own name as transferee and get the transfer registered, and thus secure a transfer of the shares, or he may sell the shares after giving reasonable notice (*r*).

(*r*) Cf. *Stubbs* v. *Slater*, [1910] 1 Ch. at p. 639. As to the authority of a broker to deposit share certificates of a client with

Deverges v. Sandeman, [1902] 1 Ch. 579.

D. bought shares through his broker, but did not pay the purchase price (carried over). He gave a blank transfer to his broker as security. The broker asked for payment in July, 1897, and after a long correspondence, the broker sold the shares in November, 1898:—**Held**, the sale was good.

If the transferor prevents the purchaser from being registered as a shareholder, he is liable to pay damages if the shares afterwards fall in value (*Hooper* v. *Herts*, [1906] 1 Ch. 549).

If by the articles of the company a transfer of shares must be under seal, a blank transfer cannot be filled up without a power of attorney (*Powell* v. *London and Provincial Bank*, [1893] 2 Ch. 555). But the mortgagee may enforce the arrangement as an agreement to give him a legal transfer.

This form of mortgage of shares is not at all a good security: for, if the transferor fraudulently tells the company that he has lost his certificate, he can get a new one and transfer the same shares to a purchaser. It is no use to give an ordinary notice of the mortgage to the company, as the company is not bound to take notice of any trusts or equities affecting the shares.

The only safe course is to give the company notice supported by affidavit under order 46, r. 4 (*s*).

This is called "notice in lieu of *distringas*" because it takes the place of the old writ of *distringas*. The mortgagee simply files an affidavit and a form of notice at the Central Office (*t*): he then serves an office copy of the affidavit and a duplicate of the

his bankers, see *Fuller* v. *Glyn & Co.*, [1914] 2 K. B. 168; and as to the authority of an agent who holds a blank transfer, see *Fry* v. *Smellie*, [1912] 3 K. B. 282.

(*s*) Rules of the Supreme Court.

(*t*) Of the Royal Courts of Justice.

notice on the company. The effect is that if the mortgagor attempts to transfer the shares, the company must give the mortagee notice that it will register the transfer unless he takes proceedings within eight days to prevent it.

Priorities as between several transferees.—If none of the transfers are registered, the first in point of time has priority (*Peat* v. *Clayton*, [1906] 1 Ch. 659). But if a transferee, who is later in date, is the first to have himself registered as a member, he gets priority.

And this priority is not lost merely because there is some detail which remains to be done by the company before he is put on the register (*Moore* v. *North Western Bank*, [1891] 2 Ch. 599).

This detail must be something that the company is bound to do.

Ireland v. Hart, [1902] 1 Ch. 522.

I. held shares as trustee for his wife. Later he deposited with H. a blank transfer and the certificate, as security for his own debt. (Thus I.'s wife had the earlier equity.) H. filled up the transfer form and took it to the company for registration, but I. told the company not to register the transfer, and the company refused to do so:—**Held**, the wife was first in time, and therefore had priority, for the company were not bound to transfer to H. if they had any good reason for refusing.

Certification of transfers.—If a shareholder transfers part only of his shares, a new certificate will be required. Thus A. has one hundred shares and wishes to sell fifty to B. A. hands his certificate and transfer to the company. The company stamps on the transfer (before it is handed to B.) "certificate for 50 shares has been lodged at the company's office (signed) , secretary" (see form on p. 106). The company is said to "certify the transfer." On registration of

the transfer, the company prepares two new certificates for fifty shares each and gives one to A. and one to B.

A delivery of a "certified transfer" in this way is accepted by the Stock Exchange as a good delivery of the shares. The company does not, however, thereby guarantee A.'s right to the certificate, but merely intimates that documents apparently in order, or a document purporting to be a certificate, have been handed in, and that A.'s name appears on the register (*Bishop* v. *Balkis Consolidated Co.* (1890), 25 Q. B. D. 512).

George Whitechurch, Limited v. Cavanagh, [1902] A. C. 117.

Transfers of shares were lodged with the secretary of the company without the certificates. The secretary fraudulently certified that the certificates were in the company's office:—**Held,** the company was not liable. A company does not do more than authorise the secretary to give receipts for certificates which have actually been lodged.

The company usually retains the original certificate, and when the transfer is complete, the original certificate is cancelled and new certificates are issued by the company. If the company negligently parts with the original certificate and enables the transferor to commit a fraud, then

(1) it may be liable to the transferee if he is damaged thereby; but

(2) it is not liable to any one else.

Longman v. Bath Electric Tramways, Limited, [1905] 1 Ch. 646.

B. transferred 1500 shares to H. and M. The company certified the transfer, and by mistake sent the original certificates to B. B. borrowed money from L. on the security of these certificates:—**Held,** the company was not liable to L.

If a transfer is forged, and the company registers the transfer and gives a certificate to the transferee, the true owner remains entitled to be put back on the register. The company does not incur any liability in damages by putting the transferee's name on the register, but if it issues a certificate, and any person acts on the faith of it and suffers damage, the company will be liable (*Bloomenthal's Case,* [1897] A. C. 156).

When the company receives a transfer for registration, it usually writes to the transferor telling him of the proposed transfer, and saying that the transfer will be registered unless he objects. This gives the holder of shares an opportunity of preventing fraudulent or forged transfers from taking effect. The holder is not bound to reply to the letter, and if he does not, he will not be thereby estopped from denying the validity of the transfer (*Barton* v. *London and North Western Rail. Co.* (1889), 24 Q. B. D. 77).

If a shareholder transfers his shares, and the transfer turns out to be invalid, he remains liable for calls on the shares. See *Addison's Case* (1870), 5 Ch. App. 294, on p. 87, *ante.*

If the transfer is valid, the transferee becomes liable, on an implied contract, to pay subsequent calls, and to indemnify the transferor against any liability in respect of them, subsequent to the date of the transfer (*Levi* v. *Ayres* (1878), 3 App. Cas. 852).

Trifling irregularities in the execution of a transfer do not make it void.

Thus a transfer may be good, though the shares are wrongly numbered (*u*); and if the transferee is registered as the holder

(*u*) Buckley, p. 581.

of the shares the transfer will be effective though it is not signed by the transferee (*v*).

Transfers made during the winding up of the company are void, unless sanctioned by the court or the liquidator (*x*).

SECTION 4.

Transmission.

On the death of a shareholder his shares vest in his personal representatives (*y*), and **his estate remains liable for calls.** His representatives can sell the shares without being registered, but subject to the provisions of the articles they are entitled to be put on the register if they wish.

For this purpose the company is bound to accept production of probate or letters of administration as sufficient evidence of their title (*yy*).

If the representatives are thus put on the register, or if they buy new shares on behalf of the deceased's estate, **they become personally liable for calls,** but are entitled to be indemnified by the beneficiaries.

In order that the company may get the benefit of this liability, the articles frequently contain clauses intended to induce or compel the representatives of a deceased shareholder to be registered within a certain time. See Article 39, p. 35 (*z*).

A notice served at the registered address of a dead shareholder is valid, if the company has no notice of

(*v*) *Re Taurine Co.* (1883), 25 Ch. D. 118.
(*x*) See p. 267, *post.*
(*y*) Shares in a limited company have always been personal property, even though the company holds land. See p. 103.
(*yy*) Companies Act, s. 69.
(*z*) The power of forfeiture conferred by this article is too stringent and is probably void. See p. 122, *post.*

his death (*a*). If the company has notice of his death, the notice should be served on his representatives. It will, however, be valid even if the company has notice of the death, at any rate if the notice comes to the knowledge of the executors (*aa*).

On the bankruptcy of a shareholder his trustees in bankruptcy can sell and transfer his shares, or may repudiate them if there is a liability.

If the shares are repudiated, the company can prove in the bankruptcy of the shareholder for the amount remaining unpaid on the shares. If this is done and the company receives a dividend in the bankruptcy, it cannot afterwards sue the bankrupt for calls; but the shares are not fully-paid shares, and are not entitled to rank as fully-paid shares in the winding up of the company (see *Re West Coast Gold Fields, Ltd.*, [1906] 1 Ch. 1).

On Marriage.—Before 1883 on the marriage of a woman entitled to shares, the shares became vested in her husband: now they remain her separate property (*b*).

On the appointment of new trustees the shares must be transferred to the new trustees by an ordinary transfer. They cannot be vested in the new trustees by a vesting declaration (*c*).

SECTION 5.

Share Warrants.

When shares are **fully paid** the company may (if authorised by its regulations) issue **share warrants**

(*a*) *New Zealand Gold Co.* v. *Peacock*, [1894] 1 Q. B. 622.
(*aa*) *James* v. *Buena Ventura Syndicate, Ld.*, [1896] 1 Ch. 456 at p. 467. *Allen* v. *Gold Reefs*, [1899] 2 Ch. 40 (C. A.), [1900] 1 Ch. 656, at p. 670.
(*b*) Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1.
(*c*) Trustee Act, 1925, s. 40 (4) (*c*).

under seal, stating that the bearer of the warrant is entitled to the shares therein specified. The shares then become transferable by delivery of the share warrant (*d*).

Such share warrants are negotiable instruments (*Bechuanaland Exploration Co.* v. *London Trading Bank*, [1898] 2 Q. B. 658, see p. 173).

Note that this can only be done when the shares are fully paid. No stamp duty is payable on a transfer, but a heavy stamp duty must be paid when the warrants are first issued (*e*).

A share warrant is usually in the following form:

THE COMPANY, LIMITED.

SHARE WARRANT.

This is to certify that the bearer of this warrant is entitled to fully paid shares of £ each in the above-named company, subject to the regulations of the company and to the conditions indorsed hereon.

The conditions indorsed on the share warrant contain the following among other provisions:

1. Warrants shall only be issued on the request of the shareholder.
2. The certificate must be surrendered to the company.
3. Coupons for dividends shall be attached.
4. Dividends may be paid to the bearer of the coupons.

When a share warrant is issued in respect of any shares, the name of the shareholder is struck off the register, because the shareholder thenceforth is the person (whoever he may be) who holds the share

(*d*) Companies Act, s. 70 (3).

(*e*) Three times the *ad valorem* stamp duty on a transfer at the nominal value: Stamp Act, 1891 (54 & 55 Vict. c. 39), sched. i. Finance Act, 1920, s. 38.

warrant, and the history of the shares no longer appears on the register, as the company does not know who the shareholder is, or who is entitled to the dividends. For this reason, "coupons" are attached to each share warrant, dated with the dates on which dividends will become payable during several years following the issue of the share warrant, and the dividend will be paid on each such date to the person who produces the appropriate coupon.

The holder of a share warrant is not strictly a member of the company under s. 25 of the Companies Act (see p. 84), because, though he may have agreed to become a member, his name is not entered on the register. But where there are share warrants, the articles usually provide that the holder of a share warrant shall be a member of the company and shall have all the powers of voting, etc., as if he were on the register, and that he must produce his share warrant to the company before he can attend any meeting or vote.

SECTION 6.

Calls.

Shares are frequently issued in the following way: (say) £100,000 is offered to the public in 1000 shares of £100 each, payable as to £10 on application, £20 on allotment, another £20 in three months' time, and the remaining £50 **when called for.**

The first two and probably the third of these payments (viz., the £10, £20 and £20), are not "**calls**" (*f*).

If the company wishes to call in the whole or part of the remaining £50, the directors make a "**call.**"

(*f*) *Croskey* v. *Bank of Wales* (1863), 4 Giff. 314.

Each shareholder is under a statutory liability, in the nature of a specialty debt (*g*), to pay the remaining £50 when thus called upon. The call is made in the manner specified in the Articles, usually by the directors, who pass a resolution at a board meeting and direct the secretary to give all shareholders notice of the call.

If the call is made otherwise than in the manner specified in the Articles, the call is invalid.

Re Cawley & Co. (1889), 42 Ch. D. 209.

A resolution of the directors was passed, fixing the amount of a call, but it omitted to fix the date of payment :—**Held,** there was no valid call until a subsequent resolution was passed, fixing the date of the call.

If a call is invalid, the shareholder is not bound to pay, and he may obtain an injunction (*h*) restraining the directors from forfeiting his shares, but he cannot restrain them from taking proceedings for the recovery of the call. His remedy in this case is to defend the action.

A call cannot be made on some of the members only, unless the articles expressly give this power (*Galloway* v. *Hallé Concerts*, [1915] 2 Ch. 233).

Mere trifling irregularities will not make a call invalid, and the Articles may provide that a call shall be good in spite of any irregularity.

Dawson v. African Consolidated Co., [1898] 1 Ch. 6.

The Articles of the company contained a clause the same as clause 99 on p. 42, *ante*. Three of the directors made a call.

(*g*) Companies Act, s. 20. This section seems to imply that the period for the Statute of Limitations is 20 years. 3 & 4 Will. IV. c. 42, s. 8.

(*h*) It is frequently made a condition of relief that the money should be paid into court. *Lamb* v. *Sambas Co.*, [1908] 1 Ch. 845.

One of them happened to be disqualified by having parted with his qualification shares for a few days :—**Held,** the call was good.

The Articles may also provide that if a call is not paid when due, interest will be charged at a certain rate.

The power to make a call is in the nature of a trust to be exercised by the directors for the benefit of the company. If, therefore, a call is made, not for the benefit of the company, but for the advantage of the directors, the call may be prevented by an injunction, or the directors may be compelled to hand over for the benefit of the company the advantage gained by them.

The following is an example of a call properly made.

New Zealand, etc., Co. v. Peacock, [1894] 1 Q. B. 622.

The A. company, in accordance with powers in its Memorandum, sold its undertaking to the B. company for shares in the B. company. Some of the capital of the A. company had not been called up, and the A. company called up this capital for the purpose of paying it over to the B. company. Some of the shareholders objected :—**Held,** the call was good.

In the following case the method of making the call was held to have been improper :—

Alexander v. Automatic Telephone Co., [1900] 2 Ch. 56.

The directors paid up nothing on their own shares, but made all the other shareholders pay 3*s.* 6*d.* on each share, partly on allotment, and partly by a call. The directors did not tell the other shareholders of this difference :—**Held,** this was a breach of trust, and the directors must pay to the company 3*s.* 6*d.* on each of their shares.

The directors may (if authorised by the regulations) allow shareholders to pay up the amount due on their shares before any call has been made, and may pay interest on the amount so paid "**in advance of calls.**"

But directors must only exercise this power if it is for the benefit of the company

Sykes' Case (1872), 13 Eq. 255.

The company had no money wherewith to pay the directors' fees. The directors therefore paid into the company's bank the amounts remaining due on their shares, and on the same day paid the amount to themselves in payment of their fees:—**Held,** this payment was not for the benefit of the company, and the directors remained liable to pay the amount as still due on their shares.

A shareholder who has paid up money in advance of calls, becomes a creditor of the company for the amount due to him as interest (*i*); therefore, if there are no profits, the interest must be paid out of capital (*Lock* v. *Queensland Investment Co.*, [1896] A. C. 461).

Calls cannot be made until the minimum subscription (*k*) has been subscribed (Companies Act, s. 94).

Calls must be paid in cash: otherwise the shareholder will remain liable on the winding-up of the company. If, however, cash to the amount of the call is actually due from the company to the shareholder for his services, the call may (before winding up) be set off against this amount, for the transaction amounts to a payment in cash (*l*).

On a transfer of shares, the transferee is under an implied contract to indemnify the transferor against subsequent calls (*m*). If, however, the call was made before the transfer, but payable after the transfer, the transferor apparently remains liable to pay the call; for a transferor "transfers his rights to future payments

(*i*) But it does not follow that the Company is entitled to repay the amount so advanced—*London and Northern S.S. Co., Ld.* v. *Farmer*, [1914] W. N. 200.

(*k*) See p. 72.

(*l*) Cf. *Larocque* v. *Beauchemin*, [1897] A. C 358, the facts of which case are summarised on p. 89, *ante*.

(*m*) See p. 113.

and his liability to future calls" (*National Bank of Wales*, [1897] 1 Ch. at p. 306).

The date when a call is "made," depends on the Articles of the company. If these are silent, the date of the resolution of the directors is usually the date of the call; but it depends on the practice of the company (*n*).

If a call is not paid within twenty years after it is made, the claim of the company is barred under the Statute of Limitations.

After winding up, debts due from the company cannot be set off against calls. See p. 231.

If a shareholder wishes to resist a call on the ground of misrepresentation, he must apply at once (by counterclaim or separate action) for rectification of the register (*o*).

SECTION 7.
Forfeiture.

The directors have no power to declare the shares of any member to be forfeited unless such power is given them by the Articles. See Article 21, on p. 32.

The Articles usually provide that, if a shareholder does not pay calls, his shares may be declared forfeited. The shares then become the property of the company, and may be sold for any price they will fetch. To this extent, **forfeited shares may be re-issued at a discount.** But the shares so sold remain unpaid to the extent that they were unpaid at the time of the forfeiture.

Morrison v. The Trustees Corporation, W. N. (1892), 154; 68 L. J. Ch. 11.

Several £10 shares with £3 paid were forfeited. The capital was afterwards reduced by converting these shares into £5 5s.

(*n*) *Addams v. Ferick* (1859), 26 Beav. 324, at p. 393.
(*o*) *First National Co. v. Greenfield*, [1921] 2 K. B. 260.

shares with £2 5*s.* paid. The directors then sold the forfeited shares for £1 10*s.* each :—**Held,** this sale was good ; but it was suggested that the shares could not have been sold as being more than £2 5*s.* paid up (*oo*).

A purchaser of forfeited shares cannot, as a rule, vote until all arrears of calls are paid (*Randt Gold Co.* v. *Wainwright*, [1901] 1 Ch. 184).

Though the forfeiture and cancellation of shares really amounts to a reduction of capital, it can be done without leave of the court, as the cancellation of forfeited shares is authorised by Clause 25 of Table A.

The power to declare shares forfeited is in the nature of a trust to be exercised for the benefit of the company. Thus, if shares are declared forfeited for the purpose of relieving a friend from liability, the forfeiture may be set aside.

Re Esparto Trading Co. (1879), 12 Ch. D. 191.

H. and G. were given certain shares to qualify them as directors. They paid nothing on the shares. Later, the company was not doing well, and H. and G. asked the company to cancel their shares. This was done :—**Held,** H. and G. were liable to pay the whole nominal amount of their shares.

Shares cannot be forfeited except for non-payment of calls or for some other similar reason contemplated by clause 25 of Table A as a cause of forfeiture. An attempt to forfeit shares for other reasons has been held to be illegal (*p*).

Though forfeiture is in the nature of a penalty, equity will not relieve a shareholder from forfeiture if it is duly and *bonâ fide* declared.

(*oo*) See also *New Balkis* v. *Randt Gold Mining Co.*, [1904] A. C. 165.

(*p*) *Hopkinson* v. *Mortimer, Harley & Co.*, [1917] 1 Ch. 646.

Sparks v. Liverpool Waterworks Co. (1807), 13 Ves. 428.

By a byelaw of an incorporated company, shares were to be forfeited if calls were not complied with within ten days. S. was absent from London for twenty-seven days after the call was made. His share was forfeited: **Held,** S. cannot be relieved from the forfeiture.

But a slight irregularity will make the forfeiture void (unless it is the company itself that tries to say that the forfeiture is bad), and the shareholder may bring an action for annulment of the forfeiture.

Garden Mining, etc., Co. v. McLister (1875), 1 App. Cas. 39.

Three directors declared certain shares forfeited; but two of the three had been re-elected at a meeting of which the proper notice had not been given (three directors were a quorum):— **Held,** the forfeiture was bad.

Or he may (if the Article so provide) prove for damages on the winding up of the company (*Re New Chile, etc., Co.* (1889), 45 Ch. D. 598).

Any clause in the Articles is void which provides that a shareholder shall forfeit his shares if he takes any proceedings against the company, or which in any way restricts the right of a shareholder to present a petition for winding up the company (*Peverill Gold Mines, Limited,* [1898] 1 Ch. 122).

Where the liability of the shareholder to pay the call is questioned, the court may restrain the company from declaring the shares forfeited during the trial of the action (*q*). The plaintiff is usually required to pay the amount of the call into court: but this is not necessarily a condition precedent to the granting of an injunction (*r*).

(*q*) *Lamb* v. *Sambas Rubber Co.*, [1908] 1 Ch. 845.
(*r*) *Jones* v. *Pacaya Rubber Co., Ld.*, [1911] 1 K. B. 455 at p. 459.

If shares are forfeited, the company cannot sue the shareholder for the calls which he has not paid unless the Articles expressly so provide. If they do, he cannot be made liable as a contributory for calls, for he has ceased to be a member, but he may be sued as an ordinary debtor to the company.

Ladies' Dress Association v. Pulbrook, [1900] 2 Q. B. 376.

A.'s shares were forfeited for unpaid calls. More than one year afterwards the company was wound up. If A.'s liability depended on his being a contributory to the company, he could not be made to contribute after ceasing to be a member for one year:—**Held,** A. was liable as an ordinary debtor, and could be sued.

SECTION 8.

Surrender.

The articles frequently give power to the directors to accept surrenders of shares; this relieves them from going through the formality of forfeiture, if the share-holder is willing to surrender the shares. But a **surrender of shares which are not fully paid can only be accepted where a forfeiture would be justified.**

Bellerby v. Rowland and Marwood's Co., Limited, [1902] 2 Ch. 14.

Three of the directors of a company, in order to relieve the company of a loss of £4000 which had been incurred, agreed to surrender for the benefit of the company several of their shares. The shares were £11 shares, and had been paid up to the extent of £10 per share. **Held,** the surrender was void, and the directors remained holders of the shares.

The same rule applies to **fully paid shares** which are surrendered for the purpose of being **cancelled** (*s*).

(*s*) *Bellerby* v. *Rowland & Marwood*, [1902] 2 Ch. 14.

"A company cannot be a shareholder of itself. Every surrender of shares, **whether fully paid up or not,** involves a reduction of capital, which is unlawful except when sanctioned by the court. Forfeiture is a statutory exception and is the only exception" (*t*).

But it has been held that fully paid shares can be surrendered without leave of the court provided the surrender does not involve a reduction of capital (*u*), *e.g.* in exchange for other shares of the same nominal value (*v*).

A surrender will be void if it amounts to a purchase of the shares by the company, or if it is accepted for the purpose of relieving a member from his liabilities (*Lord Wallscourt's Case,* W. N. (1899), 258); but a shareholder may transfer his shares to trustees in trust for the company by way of gift. This is not a surrender (*w*).

SECTION 9.

Lien.

The Articles generally provide that the company shall have a first **lien** on the shares of each member for his debts and liabilities to the company. See Article 26, on p. 33.

The effect of this is to give a charge to the company over the shares of each member to secure any debt which may be due from the member to the

(*t*) Per Cozens-Hardy, L.J., in *Bellerby* v. *Rowland & Marwood* (above). This dictum goes further than *Trevor* v. *Whitworth* (1887), 12 A. C. at p. 418.
(*u*) *Denver Hotel Co.*, [1893] 1 Ch. 495.
(*v*) *Rowell* v. *J. Rowell & Sons, Ld.*, [1912] 2 Ch. 609.
(*w*) *Cree* v. *Somervail* (1879), 4 A. C. 648, at p. 661.

company. The lien also extends to the dividends on the shares.

Power should also be given to the company to enforce the lien by sale. For though the company has a charge, there is some doubt whether it is a mortgage by deed, and if it is not, no power of sale is implied under s. 101 of the Law of Property Act, 1925. Power should also be given to the directors to appoint some person to transfer the shares sold, as the company cannot now register a transfer without an instrument of transfer (*x*).

The company cannot enforce its lien by **forfeiture**: for this would amount to foreclosure without an order of the court. Any clause in the Articles giving the company power to do so (except where the lien is for unpaid calls), would probably be void (see p. 123, *ante*).

If the company has a lien on A.'s shares for a debt and A. raises the money from B. to pay the debt, A. may call upon the company to assign its lien to B.

Everitt v. Automatic Co., [1892] 3 Ch. 506.

E. owed £4670 to the company. The company pressed for payment and threatened to sell E.'s shares. H. agreed to pay the £4670 to the company at the request of E., on condition that the company transferred its lien on the shares to him (H.) The company refused to do this.—**Held**, the company was bound to transfer its lien.

Priority.—If a shareholder mortgages his shares and the mortgagee gives notice to the company, and then the shareholder incurs a liability to the company, the mortgage has priority over the lien to the company.

(*x*) Companies Act, s. 63.

Bradford Banking Co. v. Briggs (1886), 12 App. Cas. 29.

The Articles gave the company a "first and paramount lien" over the shares for calls, etc. A shareholder deposited his share certificates with the bank as security for an overdraft. The bank gave notice to the company. Then the shareholder became indebted to the company for calls. The company claimed—

(1) A first lien by agreement;

(2) that it need not take notice of any trust:—

Held, the bank have priority. The notice was not "notice of a trust."

But the regulations may provide that any mortgagee who takes with notice of the company's lien, may be postponed to that lien.

The Articles should give the company a lien for all sums in which a shareholder may be "indebted" to the company. This is better than the word "due," for this reason: Suppose a shareholder owes money to the company and gives a bill of exchange payable in six months, the debt is not due, though the shareholder is indebted, so that the lien will only attach if "indebted" is used (*y*).

The company may enforce the lien against the registered shareholder even though he is only a trustee.

New London and Brazilian Bank v. Brocklebank (1882), 21 Ch. D. 302.

The trustees of a marriage settlement invested some of the trust funds in 123 £20 shares in the company. The Articles contained clause 26 on p. 33, and also provided that the lien should apply to a debt due from a member jointly with other persons who were not members. One of the trustees was a partner of a firm which owed money to the company:—**Held,** the company has a lien for the partnership debt over the 123 shares.

But the lien of the company would not prevail, if the

(*y*) *Stockton Iron Co.* (1875), 2 Ch. D. 101.

company had notice of the trust before the debt to the company was incurred (*z*).

It seems to follow that if a shareholder sells his shares, they do not become subject to a lien for debts incurred by him after the transfer has been lodged with the company for registration, even though the company refuse to register the transfer.

If a shareholder only sells some of his shares, the buyer can insist on the company paying itself first out of the shares which are not sold (*Gray* v. *Stone and Funnell* (1893), 69 L. T. 282).

The death of a shareholder does not destroy lien; in fact, the lien is good if it is first imposed after his death (*Allen* v. *Gold Reefs*, [1900] 1 Ch. 656; see p. 51).

(*z*) *Bradford Banking Co.* v. *Briggs & Co.* (1886), 12 A. C. 29.

CHAPTER IX.

CAPITAL.

THE word "capital" is used in several senses—

(1) **Nominal Capital** = the nominal value of the shares which the company is authorised to issue by its Memorandum. This must be stated in the Memorandum, and also each year in the annual summary (*a*).

(2) **Issued capital** = the nominal value of the shares actually issued.

(3) **Paid-up capital** = the amount paid up or credited as paid up on the shares.

(4) **Capital assets** = the actual property of the company.

The phrase "debenture capital" is sometimes used to mean the amount borrowed by the company and secured by debentures.

This is not a proper use of the word "capital," as borrowed money is not capital at all.

SECTION 1.

Classes of Capital.

The capital may be divided into different classes of shares, or it may consist wholly or partly of stock (see p. 134). This may be provided either in the Memorandum or in the Articles. Usually the Memorandum or Articles of Association gives the company

(*a*) Companies Act, s. 108 (3).

power to divide the capital into classes with special, qualified or deferred rights, and the Articles specify the rights of each class of shareholders. If no power is given to sub-divide capital either in the Articles or in the Memorandum, the company can give itself power to do so by altering its Articles (*Andrews* v. *Gas Meter Co.*, [1897] 1 Ch. 361). See p. 49.

If the rights of the various classes are fixed in the Memorandum, the company cannot change the rights of the different classes (*b*) (unless the Memorandum itself gives the company power to vary the rights (*bb*). If the rights of the different classes of shareholders are fixed by the articles and not by the Memorandum, they can be altered by special resolution without leave of the court. (*c*)

The Articles frequently provide that the rights of the various classes of shares may be varied by agreement or resolution by the holders of a certain proportion of the shares of each class. If so, a variation so carried out will be binding on all the shareholders, but persons holding 15 per cent. of the shares of the class may apply to the Court to cancel the variation. The Court will not then sanction the variation if it is unfair (*cc*).

Capital is frequently divided into—

(1) Preference shares;

(2) Ordinary shares;

(3) Deferred shares.

(*b*) See pp. 137, 138.
(*bb*) *Re Welsbach Co.*, [1904] 1 Ch. 87.
(*c*) *Re Australian Estates Co.*, [1910] 1 Ch. 414.
(*cc*) Companies Act, s. 61.

1. **Preference shares.**—The holder of preference shares is usually entitled to a fixed dividend of, say, five per cent. before any dividend is paid on the ordinary shares. But if so, he is (unless the articles expressly so provide) not entitled to more than his five per cent. however prosperous the company may be (*d*).

Preference shares are either **cumulative** or **non-cumulative.** Where they are cumulative, then, if the profits of the company in any year are not sufficient to pay the fixed dividend on the preference shares, the deficiency must be made up out of the profits of subsequent years.

Preference shares are presumed to be cumulative, and ambiguous language in the Articles will not be enough to make them non-cumulative.

Foster v. Coles, [1906] W. N. 107, and 22 T. L. R. 555.

The articles originally provided that the preference shares should be cumulative. The Articles were altered on re-construction and the word "cumulative" was omitted:—**Held,** they were still cumulative, as there was no express contrary intention.

But they may be made non-cumulative by express provision or by any language which is sufficiently clear.

Staples v. Eastman Photo Co., [1896] 2 Ch. 303.

The Articles provided that "The holders of preference shares shall be entitled **out of the net profits of each year** to a preference dividend at the rate of ten per cent. per annum:—**Held,** this was sufficient to make the shares non-cumulative (*dd*).

Unless the preference shares are made "**preferential as to capital,**" they are paid off equally with the ordinary shares on the winding-up of the company.

(*d*) *Will* v. *United Lankat Co., Ld.*, [1914] A. C. 11.
(*dd*) And see *Adair* v. *Old Bushmills Co.*, [1908] W. N. 24.

Welton v. Saffery, [1897] A. C. 299, at p. 309.

The original shares were issued to the directors only. Later, more shares were issued as "ordinary," "discount," and "bonus" shares. The "discount" shares were issued at a discount, the bonus shares for nothing. These, of course, had to be paid up in full, but the holders contended that they need only pay up sufficient to pay off the debts, and need not pay the rest of the amount due on their shares for the purpose of making an equal division among the shareholders :—**Held,** the company could have issued shares if it liked, which, **after the debts had been paid,** should be paid in full before any other shares; but the company had not done so. Therefore the whole capital must be paid up, and the surplus, after paying off the debts, divided equally among the shareholders.

If, however, the preference shares are made "preferential as to capital," any surplus capital (*e*) of the company after payment of debts will (apart from special provisions in the articles (*f*)) be applied first in paying off the capital of the preference shares.

The question whether the preference shareholders have then any further rights in the capital depends on the terms of the Articles. But where the Articles expressly give preferential rights both as to dividends and in the winding-up, they are not *primâ facie* entitled to anything further (*g*).

Arrears of dividend cannot be paid up to the date of

(*e*) As to the meaning of "surplus assets," see *re Ramel Syndicate, Ld.*, [1911] 1 Ch. 749.

(*f*) As in *re W. J. Hall & Co., Ld.*, [1909] 1 Ch. 521, where there were special provisions that arrears of dividend on the preference shares should be paid off first.

(*g*) *In re National Telephone Co., Ld.*, [1914] 1 Ch. 755; *Collaroy Co.* v. *Giffard*, [1928] Ch., at p. 160. See also *re Fraser and Chalmers, Ld.*, [1919] 2 Ch. 114, and *Anglo-French Music Co.* v. *Nicoll*, [1921] 1 Ch. 386, where the holders of preference shares were held, on the construction of the Articles, to be entitled to further participation on a winding-up. And see *re Madame Tussaud & Sons, Ld.*, [1927] 1 Ch. 657.

the winding-up unless such dividends have in fact been declared, or unless the Articles contain express provisions to this effect (*h*) or give the preference shareholders an absolute right to the dividend (*hh*).

Redeemable preference shares.—As a rule, a company cannot pay back the capital subscribed by the shareholders without the sanction of the Court; but by the Act of 1929, s. 46, a company can, if the Articles so provide, issue preference shares on the terms that they may be redeemed out of profits or out of a fresh issue of shares.

2. **Ordinary shares.**—Generally the greater part of the net profits of the company, after paying the fixed dividend on the preference shares (if any), is paid as dividend on the ordinary shares.

As to how such dividends are paid, see Chapter X.

3. **Deferred shares or founders' shares.**—These shares are usually entitled to a proportion of the profits if the dividend on the ordinary shares amounts to more than a fixed amount, *e.g.*, the deferred shares may be entitled to half the profits after a dividend of ten per cent. has been paid on the ordinary shares.

Deferred shares are usually taken by the promoters. Sometimes they are allotted to them as fully paid up in consideration of their bearing the expenses of promotion, or they may be issued in satisfaction of amounts due for underwriting commission to persons who subscribe for ordinary shares. In either of these

(*h*) *Re Crichton's Oil Co.*, [1902] 2 Ch. 86. *New Chinese Antimony Co., Ld.*, [1916] 2 Ch. 115. *Springbok Agricultural Estates, Ltd.*, [1920] 1 Ch. 563.

(*hh*) *First Garden City* v. *Bonham-Carter*, [1928] Ch. 53.

cases a contract or particulars of a contract must be filed with the registrar (*i*), and the number of founders' shares must be stated in the prospectus or statement in lieu of prospectus (*k*).

Reserve capital.—A company may by special resolution declare that any portion of its capital, which has not been already called up, shall not be capable of being called up except in the event of and for the purpose of the company being wound up (*l*).

That is, reserve capital is capital which cannot be called in except on winding up.

Reserve capital cannot be turned into ordinary capital without leave of the court, and it **cannot be dealt with or charged by the directors.**

Bartlett v. Mayfair Property Co., [1898] 2 Ch. 28.

The company by special resolution declared that £5 out of each £10 share should be reserve capital. The company then issued debentures charging its undertaking and property, including its uncalled capital:—**Held,** the reserve capital of £5 per share was not charged, and the debenture holders had not therefore a first claim upon it.

5. **Stock.**—When shares have been fully paid up (*m*), they may be turned into stock (*n*). Stock is not divided into equal parts or shares, and the divisions are not numbered but it may be divided into any amounts. Thus it would be possible to hold £10 6*s.* 8*d.* of stock, though the shares had originally been £100 shares.

(*i*) See p. 91. (*k*) See p. 66.
(*l*) Companies Act, s. 49.
(*m*) If stock is issued as partly paid up, the issue is void. *Home and Foreign Investment Co.*, [1912] 1 Ch. 72.
(*n*) Notice must be given to the Registrar (Companies Act, s. 51).

It may be either (1) registered stock.

Then a register of stockholders is kept, and stock certificates, similar in form to share certificates, are granted, and the stock is transferred by similar transfers, and the dividends are paid in the same way as in the case of shares.

Or (2) unregistered stock.

Then share warrants are issued to the holders, and these are transferable on delivery.

Stockholders are members of the company, and can vote at meetings, but if the stock is unregistered, they must prove their right to the stock before voting.

The difference between shares and stock is explained by Lord CAIRNS in *Morrice* v. *Aylmer* (1874), 10 Ch. App. 148, at p. 154:

"The use of the term 'stock,' merely denotes that the company have recognised the fact of the complete payment of the shares, and that the time has come when those shares may be assigned in fragments, which for obvious reasons could not be permitted before, but that stock shall still be the qualification, *e.g.* of directors who must possess a certain number of shares, and that the meetings shall be of persons entitled to this stock who meet and vote as shareholders, in the proportion of shares which would entitle them to vote before the consolidation into stock."

And it was there held that a bequest of shares in a company would include stock (*o*).

SECTION 2.

Increase and Alteration of Capital.

A company may increase its capital if authorised to do so by its articles (*p*). This must be done by

(*o*) But a direction in a will to invest in preference stock does not justify investment in preference shares. *Re Willis*, [1911] 2 Ch. 563.

(*p*) Companies Act, s. 50.

resolution of the company in general meeting (*pp*). (Contrast this with **reduction,** which must be by special resolution, confirmed by the court.)

The articles may authorise the increase of capital by an ordinary resolution of the company, or may delegate this power to the directors (*q*). But this does not authorise the directors to issue the new shares, unless the articles so provide (*r*).

Notice of any increase of capital must be given to the Registrar within fifteen days after the passing of the resolution (*s*).

If the regulations do not authorise the company to increase or alter its capital, it may alter its articles by special resolution and give itself the power to do so (*t*).

The new capital may consist of preference, ordinary or deferred shares, provided there is nothing in the Memorandum to prevent it. If there is, the Memorandum may be altered by leave of the court (*x*).

The nominal capital of a company may be increased though it has not yet issued all its authorised capital; but usually the increase is made because the company has issued all its authorised capital and requires more funds, *e.g.*, to extend its business. Thus, the capital may be increased from £20,000 in 2000 ordinary shares of £10 each, by the addition of £30,000 in 30,000 seven per cent. preference shares of £1 each.

Stamp duty at the rate of £1 per cent. (*xx*) is payable

(*pp*) S. 50 (2)
(*q*) *Mosely* v. *Koffyfontein Mines, Limited*, [1910] 2 Ch. 382.
(*r*) S. C. 1911, A. C. 409.
(*s*) S. 52.
(*t*) The alteration of the articles and of the capital may be effected by one resolution: *Campbell's Case* (1873), L. R. 9 Ch. Ap. at p. 21.
(*x*) See p. 137, *post*.
(*xx*) Finance Act, 1920, s. 39.

on the amount by which the nominal capital of the company is increased (*y*).

Capital may also be altered in other ways, by resolution of the company in general meeting, as when shares are **consolidated,**

E.g. every twenty 1s. shares are turned into one £1 share.

Or **sub-divided.**

E.g. every £1 share is turned into 20 1s. shares. This can be done, provided the proportions of the amounts paid and unpaid remain the same.

On sub-division of shares, preferential rights may be attached to one part of each old share; *e.g.* each old share may be divided into one preferred share and one deferred share.

Capital may also be altered by being **re-organised,** *i.e.* by altering the rights of the holders of different classes of shares (*z*) as follows:—

(1) If this involves an alteration of the Memorandum (*zz*), it must be done by means of a scheme of arrangement sanctioned by the court (*b*).

Where the reorganisation involved consolidation of classes of shares or sub-division of shares into different classes, special pro-

(*y*) *Attorney-General* v. *Anglo-Argentine Co.*, [1909] 1 K. B. 677.

(*z*) As to what are different classes, see *United Provident Co.*, [1910] 2 Ch. 477, and see S. C., [1911] W. N. 40, as to procedure when one class has voted against the proposals and subsequently votes for them.

(*zz*) *E.g.*, where the Memorandum divides the capital into preference and ordinary shares, or where it imposes a limit on the amount of dividends payable. *Re Garden Village* (*Hull*), *Ltd.* (1923), 1 Ch. 230.

(*a*) The majority must be at a meeting. Proxies are allowed. *Re Foucar & Co.*, [1913] W. N. 83.

(*b*) See p. 273, *post*, and *Re Nordberg, Ld.*, [1915] 2 Ch. 439; *Re Schweppes, Ld.*, [1914] 1 Ch. 322.

cedure had to be adopted under s. 45 of the Act of 1908. This section has now been repealed (*c*).

(2) If it does not involve any alteration of the memorandum, it may be done by special resolution without the sanction of the court (*d*).

SECTION 3.

Reduction and Diminution of Capital.

Where some of the capital of the company has been lost, it may be doubtful how far the company ought to pay dividends out of its profits without making provision for this loss. If the loss is very great, this might make it difficult for the company to pay dividends at all: consequently the company is given power to write off the lost capital and pay dividends without regard to this loss.

A company may reduce its capital by special resolution confirmed by the court, if its articles contain power to do so (*e*). This can be done

(1) by reducing the liability of members for uncalled capital;
(2) by writing off lost capital.
(3) by paying off capital which is in excess of the wants of the company, or
(4) in any other way whatever which may be approved by the court (*e*).

It is not sufficient that the Memorandum contains power to reduce, unless the Articles provide for it also

(*c*) This did not apply to an issue of preference shares. *Re Stewart Carburettor*, [1912] W. N. 100.
(*d*) *Re Australian Estates Co.*, [1910] 1 Ch. 414.
(*e*) Companies Act, s. 55; and see *Poole* v. *National Bank of China*, [1907] A. C. 229.

(*Re Dexine Patent Packing Co.*, [1903] W. N. 82). If they do not, they must be altered by special resolution, and this must be effected before the special resolution reducing the capital can be passed (*Patent Invert Sugar Co., Ltd.*, 31 Ch. D. 166.

The following case is an example of the way in which capital may be altered and reduced by leave of the court:

Re Welsbach Incandescent Co., [1904] 1 Ch. 87.

By the Memorandum, the capital was to be £3,500,000 divided into—

(1) £5 five per cent. cumulative preference shares;

(2) £1 ordinary shares to be paid seven per cent. after (1);

(3) £1 deferred shares to be paid seven per cent. after (2);

and the rights of the different classes might be modified by special resolution—

More than £2,000,000 of the capital was lost.

A special resolution was passed that the capital be reduced to £1,345,000 divided into—

(1) preference shares of 13*s.* each;
(2) ordinary shares of 5*s.* each;
(3) deferred shares of 1*s.* each;
(*i.e.*, each £1 ordinary share became a 5*s.* share, etc.).

Then by a special resolution all these were turned into stock, and each £2 of stock was re-converted into one £1 six per cent. preference share, and one £1 ordinary share:—**Held,** resolution confirmed: the court being satisfied that the £2,000,000 had been really lost, and that the scheme was fair and reasonable.

One form of reduction is an "**all round reduction**"; *i.e.*, the lost capital is written off all the shares in proportion to the nominal value: but it may be written off one class of shares and not off others.

Re Quebrada Copper Co. (1888), 40 Ch. D. 363.

The company lost some capital, and passed a resolution to write it all off the ordinary shares, and not to touch the preference shares:—**Held,** resolution confirmed; but only after full notice of the effect of this resolution had been given to all the shareholders.

Neither form of reduction will be allowed if it is unfair to any class of shareholders.

Barrow Haematite Co., [1900] 2 Ch. 846.

The capital was divided into preference and ordinary shares. The preference shares had no preference as to capital, and no voting power. No dividends had ever been paid on the ordinary shares. A resolution was passed to reduce the capital by one-quarter all round:—**Held,** this was not fair on the preference shareholders. Resolution not confirmed.

Reduction of capital has been confirmed—

(i) Though the voting power was thereby altered (*g*).

(ii) Under a scheme by which some shareholders were to take debenture stock instead of their shares (*h*).

(iii) By cancelling stock (*i*).

The court may order the reasons for reduction to be advertised (*j*).

A forfeiture of shares may, unless the shares are re-issued, involve a reduction of capital. This appears to be the only case in which a reduction of capital can take place without the leave of the court.

Form of proceedings to obtain the sanction of the court. The special resolution is first passed. Then the company must apply to the court by petition to confirm the resolution.

The petition is in the following form:

(*g*) *Re Colmer, Ld.*, [1897] 1 Ch. 524.
(*h*) *Re Thos. de la Rue & Co.*, [1911] 2 Ch. 361.
(*i*) *Re House Property Co., Ld.*, [1912] W. N. 110.
(*j*) Companies Act, s. 57. *Re Truman Hanbury & Co.*, [1910] 2 Ch. 498.

IN THE HIGH COURT OF JUSTICE.
Chancery Division.
MR. JUSTICE ——.

In the Matter of the Blank Company, Limited, and
In the Matter of the Companies Act, 1929,
To His Majesty's High Court of Justice.

The humble petition of the Blank Company, Limited, showeth as follows :

(1) Your petitioner, the above-named company, was incorporated, etc.

Here state : The nature and history of the company.
The special resolution.
Facts showing that it is a proper case for reduction.

Set out the form of minute of the proposed order, and add—
Your Petitioner the Company therefore humbly prays—

(1) That the reduction of capital to be effected by the special resolution mentioned in paragraph of the Petition may be confirmed.

(2) Or that such other order may be made in the premises as to the Court shall seem meet.

And your petitioner will ever pray, etc. (*jj*)

If the order is made, and the petition confirmed, the order must be advertised, and the Court may order the words "and reduced" to be added to the name of the company for a short period if there are special reasons for doing so (*k*).

If the reduction involves a return of capital or a reduction of liability for uncalled capital, an inquiry is ordered as to the debts and liabilities of the company by means of advertisements, and a list of

(*jj*) See Palmer, Company Precedents, 13th ed., p. 1149.
(*k*) Companies Act, s. 57 (2). By the Act of 1908 the words "and reduced" had to be added in every case, subject to certain powers of the Court to dispense with their use.

creditors is settled by the court. All the creditors must consent or be paid off.

The court can in a proper case dispense with the advertisements settling the list of creditors (*l*).

If the reduction does **not involve a return of capital or reduction of liability**, no enquiry for creditors is necessary.

Where capital is reduced on the ground that it has been lost, evidence should be given to prove the loss (*m*).

The County Court has jurisdiction to sanction the reduction if the capital is not more than £10,000, but the High Court has also jurisdiction in such a case (*n*).

Debenture-holders are not entitled to object to the reduction if there is no return of capital to the shareholders and no reduction of their liability (*o*).

Capital may be "**diminished**" by cancelling shares which have not been taken up or agreed to be taken up by any person. This may, if the articles so provide, be done by an ordinary resolution (*p*). It is not a reduction of capital (*q*).

Section 40 of the Act of 1908, whereby profits could be returned to shareholders in reduction of their liability, has been repealed.

(*l*) Companies Act, s. 56 (3).
(*m*) *Caldwell* v. *Caldwell & Co.*, [1916] W. N. 70.
(*n*) Sect. 163, and *Re Portsmouth, etc., Cleaner Co.*, [1908] W. N. 203.
(*o*) *Meux's Brewery Co.*, [1919] 1 Ch. 28.
(*p*) Companies Act, s. 50 (1) (*e*).
(*q*) Companies Act, s. 50 (3).

CHAPTER X.

DIVIDENDS.

DIVIDENDS are the profits of trading divided among the members in proportion to their shares.

The proportion may be determined by agreement in the Articles; if not, dividends are paid on each share in proportion to the nominal value of that share, without reference to the amount paid up on it.

Oakbank Oil Co. v. Crum (1882), 8 App. Cas. 65.

The capital was divided into 40,000 £1 shares fully paid up, and 20,000 £1 shares with 5*s.* only paid up. A dividend was declared in proportion to the amount paid up on the shares:— **Held**, this could not be done.

The Articles therefore sometimes provide that the dividends shall be paid to the shareholders "in proportion to the amounts paid up on the shares held by them respectively."

The dividends in each year on the ordinary shares vary with the amount of the profits made by the company; but the dividends on the preference shares are usually at a fixed rate.

The power to pay dividends is not expressly given by the Companies Act, but it is inherent in every trading company, and it need not be given by the Memorandum.

The mode of payment of dividends is determined by the Articles. These generally provide that dividends are to be paid by the directors with the sanction of a general meeting, and may be paid by cheque or

warrant sent by post to the registered address of each shareholder.

If so, the posting of the warrant amounts to payment, and if the warrant is lost, the shareholder's remedy is to sue upon the lost warrant (*z*).

Interim Dividends.—The articles usually provide that the directors may pay interim dividends.

An **interim** dividend is a dividend declared at any time between two ordinary general meetings (*a*).

The declaration of a dividend creates a debt (*b*) from the company to each shareholder, for which he is entitled to sue.

Re Severn and Wye Rail. Co., [1896] 1 Ch. 559.

R. held shares in the company upon which dividends were declared from 1832 to 1873. These dividends were never claimed or paid. In 1896, the question arose whether the right to the dividends was barred:—**Held,** when a company declares a dividend, a debt immediately becomes payable to each shareholder, for which he can sue at law, and the Statute of Limitations immediately begins to run.

The debt is in the nature of a specialty debt, and is not barred until twenty years have elapsed (*c*).

The most important rules as to payment of dividends are (1) **dividends should only be paid out of profits** (*cc*), and (2) **dividends cannot be paid out of capital** (*d*).

(*z*) *Thairlwall* v. *Great Northern Railway Co.*, [1910] 2 K. B. 509.

(*a*) *Re Jowitt*, [1922] 2 Ch. 442.

(*b*) As between tenant for life and remainderman dividends may be apportioned (*Re Oppenheimer*, [1907] 1 Ch. 399).

(*c*) *Artisans' Land & Mortgage Corp.*, [1904] 1 Ch. 796.

(*cc*) As to the meaning of "profits," see *Spanish Prospecting Co., Ld.*, [1911] 1 Ch. 92.

(*d*) *Re Sharpe; Masonic Co.* v. *Sharpe*, [1892] 1 Ch. 154.

Where however shares are issued for raising money to be spent on the construction of works, the company may pay interest on the capital so raised, though no profits are earned, if the payment is (1) authorised by the Articles, (2) sanctioned by the Board of Trade, and (3) not more than 4 per cent. (*e*).

These rules are clear, but difficulties may arise in determining in any particular case whether the dividends have really been paid out of capital or not.

Thus, suppose a company has some freehold premises which are increasing in value, and leasehold premises which are decreasing, and the business of the company is to buy and sell coal: and suppose the capital account of the company for the last two years shows the following result:

Capital Account.

	For 1929.	For 1930.
	£	£
(1) Leaseholds worth ...	... 10,000	8,000
(2) Freeholds worth ...	... 10,000	11,000
(3) Stock of coal worth	... 10,000	5,000
(4) Excess of receipts for coal over cost of coal bought ...	5,000	15,000

Disregarding (1), (2), and (3), the profits for 1930 would appear to be £15,000. But this is obviously too much, for the stock of coal has been lessened by £5000, and this should be deducted. Also the leasehold and freehold premises together are worth £1000 less than in the previous year, and this £1000 **ought** to be taken into account in estimating the profit for the year. But there appears to be no **legal** necessity to deduct the £1000.

The cases seem to show that the capital account and the revenue account must be kept separate.

A distinction must be drawn between—

(1) "**Circulating capital,**" *i.e.*, "property acquired or produced with a view to re-sale or sale at a profit" (*e.g.*, the coal in this case), and

(*e*) Companies Act, s. 54.

(2) "**Fixed capital,**" *i.e.*, "property acquired and intended for retention and employment with a view to profit" (*f*) (*e.g.*, the leaseholds and freeholds above).

Both legally and commercially any loss of circulating capital must be accounted for before the profits are ascertained.

Commercially also any loss or depreciation of "**fixed capital**" should be taken into account, and this is generally done by means of a sinking fund; but legally there are many cases in which profits may be paid away as dividends without providing for loss or depreciation of fixed capital. Any improvement or appreciation of fixed capital may, however, be counted as profit.

The following cases show the extent of the rule:

Lee v. Neuchatel Asphalte Co. (1887), 41 Ch. D. p. 1.

The company was formed to take over a concession to work asphalte, granted for twenty years, but renewed in 1871 for another twenty years. The concession was paid for by 100,000 shares and £8000 in cash. The accounts of 1885 showed a surplus of £17,000. The directors proposed to pay away in dividends £16,000 of this, without making any allowance for the fact that the concession was running out:—**Held,** (1) the assets had not depreciated (owing to the renewed concession, they were more valuable than when the company was formed); (2) the company was not bound to make up in available assets the whole of its nominal share capital, before paying dividends; (3) the directors were not bound to set aside a sinking fund.

The next case carries the rule further:

Verner v. General Commercial Trust, [1894] 2 Ch. 268.

The company was formed to purchase investments, and to borrow and lend money and pay the profits as dividends. In

(*f*) See the definitions in *Ammonia Soda Co.* v. *Chamberlain*, [1918] 1 Ch. 266, at p. 286.

1894, the receipts exceeded the expenditure by £23,000; but many of the investments had deteriorated, making a loss on the value of the assets of £250,000:—**Held,** "the statutes do not expressly prohibit payment of dividends out of capital, but their provisions are wholly inconsistent with the return of capital to shareholders." The dividend may, however, be paid in this case. There is no legal liability to have even a sinking fund.

Note that in this case the investments were intended to be retained, and it seems only reasonable that a company should not be bound to meet every depreciation of its investments before paying dividends. For such depreciation may often be only temporary.

Had the business of this company consisted of speculating in investments, the investments would have been circulating capital, and any loss must have been accounted for.

These cases were followed in *Ammonia Soda Co.* v. *Chamberlain,* [1918] 1 Ch. 266; *Lawrence* v. *West Somerset Mineral Railway,* [1918] 2 Ch. 250; and *Stapley* v. *Read Bros.,* [1924] 2 Ch. 1. Their effect is explained with a warning in—

Bond v. Barrow Haematite Co., [1902] 1 Ch. 353.

A smelting company lost £200,000 owing to a lease of certain mines of iron ore becoming useless through flooding, and £50,000 owing to depreciation of its property generally: **Held,** *Verner's Case* does not lay down a general rule that in **every** company fixed capital may be sunk or lost; but that there are companies in which this **may** be done. The £200,000 loss is a loss of circulating capital, there being no difference, in this case, between mines of ore and a stock of ore.

As to the £50,000 loss, the burden of proof is on the directors to show (1) that it is fixed capital, and (2) that in a company of this nature such fixed capital may be sunk. *Lee* v. *Neuchatel* is not an authority for stating that no company owning depreciating property need ever create a depreciation fund.

The result of these cases is, that it is usually legal, but not altogether safe, for directors to pay away profits as dividends without making any provision for making good loss of fixed capital.

The balance-sheet ought to be made out on sound business lines. The proper way is to take the facts as they stand, estimate the value of the property and the losses sustained as compared with the previous year, and strike the balance. If this is done *bonâ fide*, the dividend will not be fraudulent, even if some of the property was in fact valued too high.

National Bank of Wales, [1899] 2 Ch. 629, at p. 670, affirmed as **Dovey v. Cory**, [1901] A. C. 477.

Bad debts were included in the balance-sheet as assets: if these had been written off, no dividend could have been paid. The defendant director relied on the statements of the manager that the debts were good: **Held**, a director is not liable if he acts on the advice of a person to whom matters of detail have been properly delegated, and whom he believes to be capable and honest. The defendant was not liable.

If directors do pay dividends out of capital, they may be sued for the whole amount of the dividend actually paid out of capital. But they may recover from each shareholder the dividend received by him, if he knew that it was paid out of capital; and a shareholder who took the dividend with such knowledge cannot sue the directors (*g*); but this would not prevent him from obtaining an injunction to restrain the future payment of dividends out of capital or other illegal acts in the future (*h*).

As to accretions.—Any increase in the value of the assets may be paid out as dividend (*i*).

(*g*) *Towers* v. *African Tug Co.*, [1904] 1 Ch. 558.
(*h*) *Mosely* v. *Koffyfontein Mines, Ld.*, [1911] 1 Ch. 73.
(*i*) *Spanish Prospecting Co.*, [1911] 1 Ch. 92. But unless the increase has been realised by sale of the assets, it is dangerous to take it into account in distributing profits, unless it is clearly proved to be a permanent increase in value.

Lubbock v. British Bank of South America, [1892] 2 Ch. 198.

The company had part of its undertaking in Brazil with a capital of £500,000. It sold this part for £875,000 and agreed not to carry on a similar business. Later, the company paid £75,000 to be released from this agreement, so that the net profit on the sale (after various other payments) was £205,000 :—**Held,** this may be distributed as profit. (The judgment of CHITTY, J., at pp. 200, 201 should be read as to the mode of taking accounts.)

The whole accounts for the year must be taken into account.

Foster v. New Trinidad, etc., Limited, [1901] 1 Ch. 208.

The company had bought up an old company: among the assets were promissory notes for $127,000 which were treated in the balance-sheet as a bad debt and of no value. The notes were unexpectedly paid up in full. The directors proposed to distribute $100,000 of this as profit :—**Held,** "the question of what is profits depends on the whole accounts fairly taken for the year, capital as well as profit and loss, and although dividends may be paid out of earned profits in proper cases though there has been a depreciation of capital, an estimated accretion in value of one item cannot be deemed to be profits without reference to the whole accounts fairly taken."

On the whole, in practice, business principles are generally followed, and this was meant to be done, otherwise the provisions of the Companies Act allowing capital to be written off when lost would be useless (*j*).

Profits paid to a reserve fund remain profits and may be paid as dividends though there is a loss on capital (*k*).

Shareholders cannot insist on the payment of dividends, even where the profits are amply sufficient,

(*j*) See p. 138.
(*k*) *Re Hoare & Co., Limited,* [1904] 2 Ch. 208, at p. 213. But see *re Tilt Cove Copper Co.*, [1913] 2 Ch. 588, as to the right of debenture holders to intervene.

if the directors decline to declare a dividend, except in case of fraud (*l*).

Dividends must be paid in cash unless there is an express agreement to accept shares or debentures, etc.

Hoole v. Great Western Rail. Co. (1867), 3 Ch. App. 262.

The company had made profits, but had no available capital, and proposed to give the shareholders fully-paid shares instead: —**Held,** the shareholders are entitled to claim payment in cash.

Capitalisation of profits.—In recent years many companies have "capitalised" profits by issuing fully paid shares to the shareholders. This can be done provided there are sufficient undistributed profits available; for though a company cannot issue "*bonus*" shares, it can, if its Articles so provide, declare a dividend or bonus out of its undistributed profits, and at the same time issue a corresponding number of new shares; and it can apply the dividend and bonus, which then belong to the shareholders, in paying up in full the shares issued to them.

Sometimes the shares are issued as "bonus" shares without these steps being taken. If so, the issue is probably valid, since it can be justified on the ground that the company has only done directly what it could have done in a roundabout way (*m*).

The effect of capitalisation is that the company does not part with any of its assets; but each shareholder gets a larger number of shares.

Shares and even debentures of the company distributed in this way have been held not to be income and not liable to super-tax (*n*); but if shares in another

(*l*) *Bond* v. *Barrow Haematite Co.*, [1902] 1 Ch. 353.

(*m*) *Swan Brewery* v. *The King*, [1914] A. C., at p. 236; *Inland Revenue Commissioners* v. *Wright*, [1927] 1 K. B., at p. 348 to 349.

(*n*) *Inland Revenue Commissioners* v. *Blott*, [1921] A. C. 171; *Inland Revenue Commissioners* v. *Fisher's Executors*, [1926] A. C. p. 395.

company are distributed, super-tax is payable (*o*), and a "bonus" paid in cash is simply a dividend under another name (*p*).

When shares are transferred at or near the time of a declaration of dividend, the agreement usually specifies whether the transferee or the transferor shall get the benefit of the dividend. If the transferee is to get the dividend, the transfer is said to be "**cum dividend,**" if not, "**ex dividend.**"

If there is no agreement as to dividends, the buyer is entitled to all dividends declared after **the date of the agreement** for sale.

Black v. Homersham (1878), 4 Ex. D. 24.

August 1st, sale of shares by auction; by the conditions of sale the transfer was to be completed on August 29th. August 24th, dividends declared. August 29th, transfer completed:—**Held**, the dividends belong to the buyer. Completion relates back to the time when the purchase was made. The buyer bought the shares on that day at their then value.

(*o*) *Pool* v. *Guardian Investment Trust Co.*, [1922] 1 K. B. 347.
(*p*) *Re Bates*, [1928] Ch. 682.

CHAPTER XI.

BORROWING POWERS.

Every trading company has an implied power to borrow money for the purpose of its trading; but this power cannot be exercised until the minimum subscription has been subscribed (*a*). If a company has power to borrow, it has also power to charge its property as security for payment of the loan.

General Auction, etc., Co. v. Smith, [1891] 3 Ch 432.

The company was formed for the purchase and sale of estates, to accept loans on deposit and make advances. The Memorandum contained no power to borrow. The company borrowed on the security of some of its land in order to pay back a deposit:— **Held,** being a trading company, it had full power to borrow and charge its property.

The borrowing powers of a trading company are generally exercised by the directors, but this depends on the Articles.

Other companies have no power to borrow unless the Memorandum of Association gives them power to do so; but they may by applying to the court extend the Memorandum (see p. 25).

Sometimes the Memorandum limits the power to borrow.

E.g., the company may not borrow more than two-thirds of its paid-up capital.

(*a*) Companies Act, s. 94.

If a company borrows beyond its powers, the borrowing is **ultra vires** and void, and **the securities given are void,** and the lender cannot sue the company for the return of the loan: but

(1) If the money has not been spent, he can get an injunction to prevent the company from parting with it; or

(2) He may have an action against the directors on an implied warranty of authority;

Weeks v. Propert (1873), L. R. 8 C. P. 427.

A railway company had fully exercised its borrowing powers. The directors advertised for money to be lent on the security of debentures. W. lent £500 and received a debenture. The debenture was declared void:—**Held,** he could sue the directors for breach of warranty, implied from the prospectus that they had power to issue such debentures.

or

(3) If it has been used to pay off debts which could have been enforced against the company, the lender may sue the company, being subrogated to the rights of the creditors who were paid off.

It is on this principle that "**Lloyd's bonds**" are valid: *e.g.* a railway company which has exhausted its powers of borrowing, becomes indebted to a contractor for work done. The company gives him in payment bonds for the amount due, payable at a future date with interest, charged upon its property.

The principle is that a company which borrows to pay off existing debts does not thereby increase its liabilities (*b*).

(*b*) *Harris Calculating Machine Co.*, [1914] 1 Ch. 920.

Neath Building Society v. Luce (1889), 43 Ch. D. 158.

A building society became indebted to some of its members for principal and interest due on a mortgage. It borrowed money, **ultra vires**, to pay off principal and interest:—**Held**, the lenders had a good loan, as they were subrogated to the rights of the creditors paid off.

But this subrogation does not give the lenders the same priority that the original creditors had over the other creditors of the company.

Re Wrexham, Mold, etc., Railway Co., [1899] 1 Ch. 440.

The railway company had borrowed up to the full extent of its powers, the loans being secured by A., B. and C. debentures—the A. debentures had priority over the B. and C. debentures. A bank advanced money to pay off the interest on the A. debentures, and then claimed to stand in the place of the A. debenture holders and to be repaid their loan before the B. or C. debentures were paid:—**Held**, when a company borrows money, **ultra vires**, the lender, so far as the money is applied in discharging the legal debts of the company, is entitled to have the **loan treated as valid**, but not to have a charge in priority to the other creditors.

A company may charge its **uncalled capital** if the Memorandum or Articles allow it, or if they contain words wide enough to cover it.

Newton v. Debenture Holders of Anglo-Australian Co., [1895] A. C. 244.

The Memorandum gave power to borrow "on any security of the company" (*c*):—**Held**, these words authorise a charge on the uncalled capital.

The use of the word "property" in the instrument creating the charge, is not enough to actually charge the uncalled capital.

(*c*) These appear to have been the words upon which the decision turned, and not the further words, "upon the security of any property of the company:" see *Stanley's Case* (1864), 4 De G. J. & S. 407; *Re Streatham Estates Co.*, [1897] 1 Ch. 15.

Re Russian Spratts Patent Ltd., [1898] 2 Ch. 149.

The company had power to borrow and charge its uncalled capital. It issued debentures charging its "undertaking and all property to which it now is or **shall at any time become entitled**":—**Held,** this did not create a charge on the uncalled capital.

A mortgage of uncalled capital is usually enforced by the appointment of a receiver (see p. 186) and by an order of the Court giving the receiver power to use the name of the liquidator for the purpose of making calls (*d*).

A company cannot borrow on the security of its **reserve** capital (see p. 134), nor of its books, for they must be kept at the office of the company and be open for inspection. If, therefore, the company charges all its undertaking, the liquidator, on a winding-up, has a better right to the books than the receiver appointed by debenture-holders (*Engel* v. *South Metropolitan Co.*, [1892] 1 Ch. 442).

Money borrowed by a company may be secured by any one of the following securities or by several of them at once:

(1) A legal mortgage of specific parts of its property.

A company can mortgage its freehold or leasehold property in the same way as an ordinary person; but such mortgages **must be registered**—

(a) On the register kept by the company.

Every company must keep a register of mortgages specifically affecting property of the company and all floating charges, with a

(*d*) *Re Westminster Syndicate, Limited*, [1908] W. N. 236.

description of the property charged, the amount of the charge, and the names of the mortgagees (*e*).

Failure to register under this section does not make the mortgage void (*f*).

(b) On the register kept by the Registrar, but only if it is for one or more of the purposes mentioned on p. 175 (*g*).

Non-registration under this section makes the security void.

(2) An equitable mortgage by deposit of title deeds.

This must be registered on the company's register, and if it is for any of the purposes mentioned on p. 175, it must be accompanied by some writing to be filed with the Registrar under s. 79.

(3) A mortgage of chattels.

This must always be registered on the company's register and with the Registrar; for by section 79 of the Companies Act any mortgage created by an instrument which, if executed by an individual, would be a bill of sale, must be registered: and a mortgage of chattels by an individual is almost always a bill of sale under the Bills of Sales Act, 1882 (*h*).

(4) Bonds (see p. 153).

(5) Promissory notes and bills of exchange.

These may be made or accepted on behalf of the company by any person having its authority (*i*), and if the company has on a fair construction of its Memorandum power to do so (*k*).

(6) A floating charge evidenced by debentures (see Chap. XII.).

(7) Debenture stock (see p. 157).

(*e*) Companies Act, s. 88.
(*f*) *Wright* v. *Horton* (1887), 12 A. C. 371: penalty £50.
(*g*) Companies Act, s. 79.
(*h*) See 41 & 42 Vict. c. 31, s. 4.
(*i*) Companies Act, s. 30.
(*k*) *Peruvian Railways* v. *Thames, etc., Co.* (1867), L. R. 2 Ch. 617, 623.

CHAPTER XII.

DEBENTURES.

Section 1.

Debentures and Debenture Stock.

A **debenture** is a document given by a company as evidence of a charge created by the company usually in return for a loan.

The word has been used to cover many things (*a*), but it generally means one of a series of documents described as debentures all ranking *pari passu*, by each of which a company promises to pay a fixed sum and interest, and charges all its property present and future.

Debenture stock.—Some difficulty is often felt in attempting to distinguish between debentures and debenture stock; but the difficulty arises from trying to contrast an instrument securing a debt with a debt itself of another nature, and from the fact that the word "debenture" is often used loosely as referring to the debt secured by debentures. In other words, as in the case of a debenture, there is a debt due from the company secured or evidenced by a document called a **debenture,** so in the case of debenture stock, there is an obligation or a debt due from the company, called

(*a*) Cf. *Lemon* v. *Austin Friars Investment Trust, Ld.*, [1926] Ch. 1.

debenture stock, and secured or evidenced by a document called a **debenture stock certificate.**

Debenture stock is a debt or obligation, generally secured by a trust deed; it is subdivisible, but otherwise is much the same as a debt secured by debentures.

The difference between a debt secured by debentures and debenture stock is very like the difference between shares and stock (*b*).

The liability of the company is regarded as a liability to pay an annuity rather than as a liability to repay a loan.

"The transaction . . . is one of sale and purchase of an annual sum with a superadded right on the part of the purchaser to have, in certain defined events, a lump sum, . . . paid to him in lieu of further annual payments" (RIGBY, L.J., [1899] 1 Q. B., p. 138).

The phrase "**mortgage debentures**" is only another name for **debentures** creating a charge on the property of the company; but the Stock Exchange objects to an instrument being called a **mortgage debenture** unless it is secured by a trust deed. This is frequently done. See pp. 162 and 170.

There are several kinds of debentures, of which the most usual are—

(1) Debentures payable to registered holder;
(2) Debentures payable to bearer.

SECTION 2.

Debentures Payable to Registered Holder.

The following is a common form of **debenture payable to registered holder:**

(*b*) A bequest of debentures will carry debenture stock (*Re Herring*, [1908] 2 Ch. 493, at p. 498).

(Registered with the Registrar of Companies, 24th May, 1929.)

BLANK, LIMITED.

Registered office:

Debenture.

No. 175. £100.

1. Blank, Limited (hereinafter called "the company"), will, on the 1st day of January, 1950, or on such earlier day as the principal money hereby secured becomes payable in accordance with the conditions endorsed hereon, pay to , of , or other the registered holder hereof for the time being, his executors, administrators, or assigns, the sum of one hundred pounds.

2. The company will in the meantime pay to such registered holder interest thereon at the rate of five per centum per annum, by half-yearly payments on the first day of July and the first day of January in each year, the first of such half-yearly payments to be made on the 1st day of July next.

3. The company hereby charges with such payments its undertaking and all its property whatsoever and wheresoever, both present and future, including its uncalled capital for the time being.

4. This debenture is issued subject to the conditions endorsed hereon, which are to be deemed part of it.

Given under the common seal of the company this 19th day of May, 1929.

(Seal.) The common seal of the company was affixed hereto in the presence of

} Directors.

, Secretary.

THE CONDITIONS BEFORE REFERRED TO.

1. This debenture is one of a series of debentures issued or to be issued by the company for securing principal sums not exceeding in the aggregate the sum of £100,000. The debentures of the said series are all to rank *pari passu* as a first charge on the

property hereby charged, without any priority one over another, and such charge is to be a floating security, but so that the company is not to be at liberty to create any mortgage or charge on any of its property and assets in priority to the said debentures.

2. A register of the debentures will be kept at the company's registered office, wherein will be entered the names, addresses, and descriptions of the registered holders, and particulars of the debentures held by them respectively. The said register will at all reasonable times during business hours be open to the inspection of the registered holder thereof or his legal personal representative.

3. The registered holder or his legal personal representative will be deemed to be exclusively entitled to the benefit of this debenture, and the company and all persons may act accordingly. The company shall not be bound to enter in the register notice of or in any way to recognise any trust or the right of any person other than the registered holder to any benefit under this debenture, save as herein provided.

* * * * *

5. Every transfer of this debenture must be in writing under the hand of the registered holder hereof or his executors or administrators. The instrument of transfer must be delivered at the registered office of the company, duly stamped, with a fee of two shillings and sixpence and such evidence of identity or title as the company may reasonably require, and thereupon the transfer will be registered, and a note of such registration endorsed hereon.

6. No transfer will be registered during the seven days immediately preceding the days by this debenture fixed for payment of interest.

7. In the case of joint registered holders the principal money and interest hereby secured will be deemed to be owing to them upon a joint account.

8. The principal money and interest hereby secured will be paid without regard to any equities between the company and the original or any intermediate holder thereof, and the receipt of the registered holder for such principal money and interest shall be a good discharge to the company.

9. The company may at any time give notice in writing to the registered holder hereof, his executors or administrators, of its

intention to pay off this debenture, and upon the expiration of one calendar month from such notice being given the principal money hereby secured shall become payable.

10. The principal money hereby secured shall immediately become payable—

(a) If the company make default for a period of three calendar months in the payment of any interest hereby secured, and the registered holder hereof, after the expiration of the said period of three calendar months, and before such interest is paid, by notice in writing to the company call in such principal money.

(b) If a distress or execution be levied or sued out upon or against any of the property and assets of the company, and be not paid out within seven days.

(c) If an order be made or an effective resolution be passed for the winding up of the company.

(d) If a receiver of the property and assets of the company be appointed by any court of competent jurisdiction.

11. The principal money and interest hereby secured will be paid at the company's bankers for the time being or at the registered office of the company.

12. A notice may be served by the company upon the holder of this debenture by sending it through the post in a prepaid letter addressed to such person at his registered address.

13. Any notice served by post shall be deemed to have been served at the expiration of twenty-four hours after it was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

14. At any time after the principal money hereby secured becomes payable, the registered holder of this debenture may by writing under his hand appoint any person or persons to be a receiver or receivers of the property hereby charged.

Any receiver so appointed shall have power—

(1) To get in and take possession of all or any of the property hereby charged.

(2) To carry on the business of the company.

(3) To sell any of the property hereby charged.

(4) To make any arrangement or compromise which he shall consider to be in the interests of the debenture holders.

A receiver so appointed shall be deemed to be the agent of the company, and the company shall be solely responsible for his acts or defaults and for his remuneration. The provisions of sects. 101, subsects. (1) and (2), 104, 106, 107 and 109, subsects. (3), (4), (6), (7), and (8) of the Law of Property Act, 1925, and the powers thereby conferred on a mortgagee or receiver shall, so far as applicable, apply to the receiver so appointed as if such provisions were incorporated herein, save that all moneys received by such receiver, after providing for the matters specified in clauses (i) to (iii) of sect. 109, subsect. (8) aforesaid and for all costs, charges, and expenses of or incidental to the exercise of any of the powers of such receiver, shall be applied in or towards satisfaction *pari passu* of the debentures.

15. The registered holder shall have the benefit of the trust deed dated, etc., and made, between the company and A. and B. as trustees for the debenture-holders.

As to the form.—Debentures need not be by deed (*c*), but if not, the consideration must be stated. They may be, and often are, accompanied by a trust deed vesting specific property of the company in trustees for the debenture holders. Sometimes they create a charge over specific property only.

The date fixed for repayment of the capital is generally five, ten or twenty years after the issue, or they may be payable on demand (*cc*); or they **may be perpetual.** If so, the capital money only becomes payable if any of the things specified in condition 10 should happen.

Debentures could always be made "perpetual" in the sense that there need not be any time fixed

(*c*) *Re Fireproof Doors, Ltd.*, [1916] 2 Ch., at p. 150.

(*cc*) If payable "on or after" a fixed date, this means "payable on demand after" that date. The prospectus cannot be referred to for the purpose of explaining the debenture. *Re Tewkesbury Gas Co.*, [1911] 2 Ch. 279, [1912] 1 Ch. 1.

within which the company was *bound* to pay them off.

A company could not before 1908 issue perpetual debentures in the sense that the company **could never pay them off** without the consent of the debenture-holder, unless the company had express power to do so (*d*), but now—

a condition in any debentures making the debentures irredeemable is not void (*dd*).

The word "irredeemable," if strictly construed means that the company must never pay off the debentures; but the context may show that it means that the debenture holder can never demand payment (*e*).

The interest on debentures is a debt, and may be paid out of capital (*f*).

As to condition 1.—"*Pari passu*" means that all the debentures of this series are to be paid rateably, so that if there is not enough to go round, they shall all abate proportionally.

The Midland Express, Ld., [1913] 1 Ch. 499.

The company had issued £100,000 of debentures payable "pari passu." One of the debenture holders commenced an action to realise the security, and the usual judgment was made in June, 1912, directing enquiries as to the amounts due to the debenture holders. The interest on some of the debentures had been paid down to 1906, but on others not since 1902.

In July, 1912, the master made his certificate of the amount then due for principal and interest to each debenture holder.

The net assets amounted to £12,464. It was claimed that this sum must be applied, first in equalising the arrears of

(*d*) *Southern Brazilian, etc., Co.*, [1905] 2 Ch. 78.
(*dd*) Sect. 74.
(*e*) *Re Joseph Stocks, Ld.*, [1912] 2 Ch. 134 (*note*).
(*f*) And may be so treated in the accounts (*Hinds* v. *Buenos Ayres, etc., Co.*, [1906] 2 Ch. 654).

interest:—**Held**, the £12,464 must be divided among the debenture holders in proportion to the amount found due to them for capital and interest at the date of the master's certificate.

If the words "pari passu" were not put in, the debentures would be payable according to the date of issue, or if they were all issued on the same day, then according to numerical order (*Gartside* v. *Silkstone, etc., Co.* (1882), 21 Ch. D. 762: see below).

If these words are put in, a debenture-holder who seeks to enforce his security must sue on behalf of himself and all other debenture-holders of the same series. But he may take other steps against the company to get his own debt paid without consulting the interests of the others, provided he does not attack any specific asset of the company.

The company cannot create a new series to rank *pari passu* with the old series, unless power to do so is expressly reserved.

Gartside v. Silkstone, etc., Co. (1882), 21 Ch. D. 762.

150 debentures for £100 each were issued on the same day, numbered 501–650. On Nos. 501–600 it was stated that the issue was for £10,000, to be paid *pari passu*. On Nos. 601–650 it was stated that the issue was for £5000 to be paid "*pari passu*" :—**Held**, the 100 must be paid before the 50. The presumption is that deeds are executed according to their dates, and in this case (the date being the same) according to their numbers; and you cannot look **outside the deeds themselves** to prove that this was not so. (N.B.—If the first deeds had contained power to issue another £5000 *pari passu* with the first issue, the presumption might have been rebutted from the deeds themselves.)

"**Floating charge.**"—This means that the assets of the company are charged with the payment of the

debt, but **the company may deal with any of its assets in the ordinary course of business, until the charge becomes a fixed charge.** This happens when the money becomes payable under condition 10, **and** the debenture holder takes some steps to enforce his security. The charge is then said to "**Crystallise.**"

Re Panama Co. (1870), 5 Ch. 318.

The company charged its "undertaking":—**Held**, this is a good charge. "The word 'undertaking' necessarily infers that the company will go on, and that the debenture-holder could not interfere until either the interest which was due was unpaid, or until the period had arrived for payment of his principal, and that was unpaid."

The characteristics of a floating charge were stated by ROMER, L.J., in—

Re Yorkshire Woolcombers' Association, [1903] 2 Ch. 284.

The company gave a charge over its book debts, present and future:—**Held,** any mortgage by a company which contains the three following characteristics is a floating charge:

(1) It is a charge on a class of assets, present and future;

(2) That class is one which, in the ordinary course of business, would be changing from time to time; and

(3) It is contemplated that until some steps are taken the company shall carry on its business in the usual way.

Unless otherwise agreed, this leaves the company free to make specific mortgages of its property having priority over the floating charge.

Governments Stock Co. v. Manila Rail. Co., [1897] A. C. 81.

The debentures created a floating charge. Three months' interest became due, but the debenture-holders took no steps. The company then made a mortgage of a specific part of its property:—**Held,** the mortgage has priority. The debentures

remained merely a floating security until the debenture-holders took some steps to enforce their security (*g*).

In fact the company **can deal with its property in any way authorised by its Memorandum** of association **so long as it remains a going concern** (*h*).

E.g. it may assign the rents of land which is subject to a floating charge (*i*).

It has been held that a company may even sell its whole undertaking if that is one of its objects specified in the Memorandum (*j*).

A floating charge is also **liable to be postponed** to the rights of the following persons if they act **before the debenture-holders take steps to enforce their security** (*k*), *e.g.* by the appointment of a receiver in Court or out of Court (*l*).

(1) A landlord who distrains for rent (*Re Roundwood Colliery Co.*, [1897] 1 Ch. 373; *South Rhondda Colliery Co.*, [1928] W. N. 126).

(2) A creditor who gets a garnishee order absolute (*Robson* v. *Smith*, [1895] 2 Ch. 124) (*ll*).

(*g*) See *Cox-Moore* v. *Peruvian Corporation, Limited*, [1908] 1 Ch. 604.

(*h*) *Governments Stock Co.* v. *Manila Railway Co.*, [1897] A. C. 81.

(*i*) *Ind Coope & Co., Ld.*, [1911] 2 Ch. 223. But otherwise if the land is specifically charged.

(*j*) *Re Borax Co.*, [1901] 1 Ch. 326; but as to such a sale, see *Bisgood* v. *Henderson's Transvaal, Limited*, [1908] 1 Ch. 743.

(*k*) A mere demand for payment is not sufficient to crystallise the charge. *Evans* v. *Rival Granite Quarries, Ld.*, [1910] 2 K. B. 979.

(*l*) *Evans* v. *Rival Granite Quarries*, [1910] 2 K. B. at pp. 987, 1001.

(*ll*) But not a garnishee order *nisi* (*Norton* v. *Yates*, [1906] 1 K. B. 112).

(3) A judgment creditor if the goods are seized and sold by the sheriff or the debt is paid to the sheriff to avoid a sale (*m*) before the debenture-holder takes steps.

But if the goods are not sold, the floating charge has priority.

Davy & Co. v. Williamson & Sons, [1898] 2 Q. B. 194. The debentures created a floating charge. Goods of the company were seized by the sheriff under a *fi. fa.* Then the debenture holders for the first time took steps to enforce their security, and claimed priority:—**Held,** the debentures have priority: the debentures being a valid charge, the company had no interest in the property available to satisfy a judgment debt. Seizure of goods by the sheriff is not a dealing with the assets in the ordinary way of business.

(Note that, when the goods are sold under the *fi. fa.* they become the property of the purchaser.)

Rates and taxes and wages due to a clerk or servant or other person entitled to preferential payment on a winding-up, also have priority over debentures which create only a floating charge (*n*).

A floating charge created within six months of a winding-up is void in certain cases. See p. 287.

A person who has supplied goods to the company under a hire purchase agreement on the terms that they are to remain the property of the lender until paid for in full, has priority over the debentures (*o*).

(*m*) *Heaton and Lugard, Ld.* v. *Cutting Bros, Ld.*, [1925] 1 K. B. 655.

(*n*) Companies Act, ss. 78 and 264.

(*o*) *Re Morrison, Jones & Taylor, Ld.*, [1914] 1 Ch. 50. In this case the hire purchase agreement was made before the debentures were issued; but the person who supplied the chattels would probably have the same priority if the hire purchase agreement were made after the issue of the debentures, unless the chattels became fixtures and the debentures contained a specific charge on the land. Cf. *Wilson* v. *Kelland*, [1910] 2 Ch. 306.

A clause is frequently inserted in the debentures that the company shall not be able to create mortgages in priority to or *pari passu* with the debentures of that issue; but even then a person who takes a mortgage without notice of the debenture gets priority, even by an equitable mortgage by deposit, if he has no notice of this provision in the debenture.

Re Valletort Steam Laundry, [1903] 2 Ch. 654.

The debentures created a floating charge, and contained a provision that the company were not to create any prior charge. The manager forgot this, and deposited deeds with a bank as security. The bank held some of these debentures on deposit for a customer:—**Held**—

(1) The bank had not constructive notice of the debentures;

(2) The bank had priority (*p*).

Where the company buys land and some of the purchase money is allowed to remain on mortgage (*q*) or is lent by some person who takes a charge (*r*), the charge of the debenture-holders is subject to the charge in favour of the seller or lender.

An express power to create mortgages ranking in priority to a floating charge does not authorise the issue of a new floating charge in priority to the first (*s*).

In case a debenture-holder owes a debt to the company which cannot pay its debentures in full, he cannot set off his debt against the debenture. The rule is that a person claiming a share of a fund must first pay up everything he owes to the fund (*Re Brown & Gregory, Ld.*, [1904] 1 Ch. 627; *Re Goy & Co., Ld.*, [1900] 2 Ch. 149).

(*p*) And see *Cox-Moore* v. *Peruvian Corporation*, [1908] 1 Ch. 605.
(*q*) *Willson* v. *Kelland*, [1910] 2 Ch. 306.
(*r*) *Re Connolly Brothers, Ld.* (No. 2), [1912] 2 Ch. 25.
(*s*) *Benjamin Cope & Sons, Ld.*, [1914] 1 Ch. 800.

The equitable rules against clogging the equity of redemption may apply to a floating charge (*t*).

As to conditions 3 and 8.—The effect of these clauses is that the company **may** disregard any notice of equities attaching to the debentures.

Société Generale v. Walker (1885), 11 App. Cas. at p. 30. The Articles contained a clause similar to conditions 3 and 8 above:—**Held,** "there was no obligation on this company to accept or to preserve any record of notices of equitable interests or trusts if actually given or tendered to them, and that any such notice if given would be absolutely inoperative to affect the company with any trust."

But the company **need not** disregard equities, and if the company has equitable claims against the debenture-holder, it may refuse to register the transfer (*Re Palmer's Decoration and Furnishing Co.*, [1904] 2 Ch. 743).

If a condition to this effect was not inserted, a debenture, being a chose in action, would be assignable subject to all equities.

Athenæum Society v. Pooley (1858), 3 De G. & J. 294. Debentures were issued to P. under an agreement which was a fraud on the company. P. sold them to L., who had no notice of these facts:—**Held,** L., though a *bonâ fide* purchaser for value without notice, being only a purchaser of a chose of action, must take it subject to the equities attaching to it. Therefore L. cannot sue on the debentures (*x*).

As to condition 5 (p. 160).—The object of requiring all transfers to be delivered to the company, is to

(*t*) *G. and C. Kreglinger* v. *New Patagonia Meat Co., Ld.*, [1914] A. C. at p. 41; but see *De Beers Mines* v. *British South Africa Co.*, [1912] A. C. 52, and *Cuban Land and Development Co.*, [1921] 2 Ch. 147.

(*x*) This was before the Judicature Act, 1875 (36 & 37 Vict. c. 66), s. 25 (6), but choses in action are assignable subject to equities under that Act; and see *Re Rhodesia Goldfields, Limited*, [1910] 1 Ch. 239.

secure that the company shall have all the relevant documents in its possession in case of a dispute as to the title to any debentures.

As to condition 10 (p. 161).—The effect is that if there is undue delay in payment of the interest or if the security becomes endangered, the debenture-holder can immediately take proceedings to recover his money.

As to condition 11.—A demand for payment at the place specified in this condition is not necessary before proceedings are commenced (*y*).

As to condition 14.—The debenture-holders can always get a receiver appointed by the court if a proper case has arisen, whether or not this clause is inserted. The object of the clause is to enable them to appoint a receiver themselves without applying to the court. (See section 8, p. 186.)

As to condition 15 (p. 162). The advantages of having a trust deed are:

(1) If the company makes default, the trustees are there, ready to take the necessary steps, instead of leaving it to the initiative of some debenture-holder.

(2) The trustees may be given power to sell and thus to realise the security without the aid of the court.

(3) A legal estate is vested in the trustees. This prevents a subsequent legal mortgagee from getting priority.

(4) The company can be made to insure, etc., by covenants in the deed.

(*y*) *Harris Calculating Machine Co.*, [1914] 1 Ch. 920.

Form of the deed (*a*).—The deed usually contains the following provisions:—

(1) A lease or "demise" of the freeholds, and a sub-demise of the leaseholds to the trustees for a term of years.

(2) A floating charge over the rest of the assets of the company.

(3) The company is to retain possession until it makes default in payment of interest, etc.; then the trustees are to enter and sell.

(4) Power to the trustees to sell or exchange any of the above-mentioned properties of the company at the request of the company.

(5) Power to the trustees to convene meetings of debenture-holders, etc.

(6) Covenants by the company to insure, repair, etc.

(7) Provisions for remuneration of the trustees.

As to (1).—This gives the trustees a legal mortgage of the freeholds and leaseholds, and these cannot be sold or dealt with without the trustees' consent.

As to (5).—Debentures sometimes contain a clause that the rights of the debenture-holders may be modified with the consent of a majority of (say) three-fourths of them, and that this consent shall bind all the debenture-holders (*Sneath* v. *Valley Gold Co.*, [1893] 1 Ch. 477). The modification may provide for postponement of payment of principal or interest (*b*) or for any other alteration of the rights of the debenture-holders, provided it is not unfair or oppressive (*c*), or obtained by a bribe or a special advantage given to some of the debenture holders (*cc*).

(*a*) As to the stamp on a debenture trust deed, see *Suffield* v. *Inland Revenue Commissioners*, [1908] 1 K. B. 865.

(*b*) *Northern Assurance Co., Ld.* v. *Farnham Breweries*, [1912] 2 Ch. 125, where redeemable debentures were made "irredeemable."

(*c*) *Goodfellow* v. *Nelson Line, Ld.*, [1912] 2 Ch. 324 (alteration upheld). *New York Taxi-Cab Co.*, [1913] 1 Ch. 1 (alteration held invalid).

(*cc*) *British America Nickel Corpn.* v. *O'Brien*, [1927] A. C. 369.

As to (7).—The remuneration of the trustees is usually a first charge on the assets (*d*); it usually continues to be payable "during the continuance of the security"; but it is better to add "notwithstanding the appointment of a receiver" (*e*).

SECTION 3.

Debentures to Bearer.

The object of making a debenture payable to bearer is that it may become a negotiable instrument, that is to say:

(1) It is transferable by delivery.

(2) A transferee in due course gets a title independent of any defects in the title of the transferor.

(3) No notice of transfers need be given to the company.

(4) No stamp duty is payable on a transfer.

As in the case of share warrants, the interest is payable to the bearer of a coupon, which is merely an order on the company or the company's bank to pay a certain sum to the person who presents it on or after a certain date. Several coupons are attached to each debenture and are cut off by the holder one by one as the date for payment of each arrives.

Form of debentures to bearer.—The form is much the same as the form of a debenture to registered holder (on p. 159), except that the agreement is to pay "to the bearer on presentation of this debenture" and to pay interest "in accordance with the coupons annexed hereto."

(*d*) *Re Piccadilly Hotel*, [1911] 2 Ch. 534.
(*e*) See *British Consolidated Oil Co., Ld.*, [1919] 2 Ch. 81, not following *Re Locke & Smith*, [1914] 1 Ch. 687.

The conditions indorsed on the debenture contain some of the same clauses, but omit all reference to a register or registered holder, and also contain the following clauses:

(1) Interest shall be payable only to the person producing the coupon.

(2) When the principal sum due is paid off, the debenture and coupons must be surrendered.

(3) The company may safely pay interest to the bearer of the coupon.

(4) Notice affecting the holders (*e.g.*, of intention to pay off) may be given by advertisement.

(5) The debenture is to be treated as negotiable.

(6) On the request of the holder, the company will exchange his debenture for a debenture to registered holder.

Debentures payable to bearer are negotiable.—There was at one time some doubt as to this, for at common law an instrument **under seal** could not be negotiable (*Crouch* v. *Credit Foncier* (1873), L. R. 8 Q. B. 374). But it was held that in the case of a **foreign** instrument under seal, if it was treated by the general custom of merchants as being negotiable, it would be recognised as such by English law (*Goodwin* v. *Robarts* (1875), L. R. 10 Ex. 337). It is now settled that the latter doctrine applies also to English documents even though under seal.

Bechuanaland Exploration Co. v. London Trading Bank, [1898] 2 Q. B. 658.

The plaintiffs held debentures of an English company, payable to bearer and under the seal of the company. The plaintiffs kept them in a safe of which their secretary had the key. The secretary pledged the debentures with the defendant bank as security for a loan. The bank took them *bonâ fide*, having recently received from the plaintiffs an assurance that their

secretary was absolutely trustworthy :—**Held,** the debentures are negotiable. The defendants have a good title.

Bearer debentures are now recognised as negotiable without the necessity of proving a custom of merchants to treat them as such.

Edelstein v. Schuler, [1902] 2 K. B. 144.

Debenture bonds, payable to bearer, were stolen and sold through a broker :—**Held** (BIGHAM, J.), "The time has passed when the negotiability of bearer bonds, whether government bonds or trading bonds, foreign or English, can be called in question. The existence of the usage has been so often proved that it must be taken to be part of the law."

SECTION 4.

Registration of Debentures.

Debentures or other mortgages made by limited companies need not be registered as bills of sale, even if they include chattels, for, by the Bills of Sale Act, 1882, s. 17, debentures of "any **mortgage, loan, or other** incorporated company" (*f*) need not be registered.

Re Standard Manufacturing Co., [1891] 1 Ch. 627.

It was argued that the debentures of a company must be registered as bills of sale, unless it was a **mortgage or loan** company or some similar company, *i.e.* that the words "other company" must be construed *ejusdem generis* :—**Held,** the section applies to *all* incorporated companies.

The reason is that sufficient provision is made in the Companies Act for the registration of debentures.

Debentures or mortgages made by companies need not be registered as land charges under the Land Charges Act, 1925 (*g*).

(*f*) This includes a company registered in Guernsey (*Clark* v. *Balm, Hill & Co.*, [1908] 1 K. B. 667).

(*g*) Sect. 10 (5).

Debentures created after the 1st of January, 1901, **must be registered under the Companies Act.**

By sect. 79 every mortgage or charge of any of the following kinds created by the company, **so far as it creates a charge, is void** (*h*) as against the liquidator and creditors of the company **unless particulars of the charge are delivered for registration with the registrar within twenty-one days** of its **creation**. The charges affected bythis section are:

(a) a charge for securing an issue of debentures; **or**
(b) a charge on uncalled capital; **or**
(c) a charge created by an instrument which if made by an individual would require registration as a bill of sale; **or**
(d) a charge on land (*i*); **or**
(e) a charge on book debts; **or**
(f) a floating charge (*j*); **or**
(g) a charge on calls made but not paid; or
(h) a charge on a ship or a share in a ship; **or**
(i) a charge on goodwill, patents, trade marks or copyright (*k*).

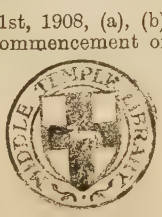
Under the Act of 1929 (sect. 81), when a company

(*h*) See as to the effect of this *Dublin City Distillery* v. *Doherty*, [1914] A. C. 823.

(*i*) A deposit of title deeds, or any other equitable or implied charge should be registered. Thus, if a solicitor claims a lien over the deeds of a company for his costs his lien should be registered. So also a contract for sale of land to a company should be registered if the vendor wishes to rely on his lien for unpaid purchase-money.

(*j*) *E.g.* a trust deed to secure a bonus on debenture stock, charged on certain profits. *Hoare* v. *British Columbia Co.*, [1912] W. N. 235.

(*k*) If created after July 1st, 1908, (a), (b), (c), (d), (e) and (f) apply. If created after the commencement of the Act of 1929, (g), (h) and (i) also apply.



acquires property which is already subject to a charge, it must send to the registrar particulars of the charge and a copy of the instrument creating it.

In case of a series of debentures the register states—

(a) the total amount secured;

(b) dates of resolutions and deeds (if any) which created the charge;

(c) description of the property charged; and

(d) names of the trustees (if any) (sect. 79 (8)).

Besides the register kept by the registrar the company must:

(1) keep a register of mortgages and charges specifically affecting property of the company and floating charges (sect. 88);

(2) keep copies of all mortgages and charges which have to be registered with the registrar (sect. 87).

The company usually keeps a register of debenture-holders; but it is not bound to do so.

Right of Inspection.

(1) The register kept by the registrar must be open to the inspection of any one on payment of not more than 1s. (*l*).

(2) The register of mortgages kept by the company must be open to creditors and members of the company free, and to other persons on payment of not more than 1s. (*m*).

(3) The copies of mortgages registered with the registrar must be open to creditors and members free, but not to other persons (*m*).

(4) The register of debenture-holders (if any) must be open to

(*l*) Companies Act, s. 82 (3).
(*m*) *Ibid.*, s. 89.

registered debenture-holders and members of the company subject to any reasonable restrictions (*n*).

Shareholders and debenture-holders are also entitled to require a copy of the register of debenture-holders at 6*d.* per 100 words (*n*), and debenture-holders are entitled to require copies of the debenture trust deed, if any, for 1*s.* if printed, or if not at 6*d.* per 100 words (*o*).

Effect of Non-Registration.—If a mortgage or charge is not registered with the registrar, it is **void** as to the security, but the obligation to pay the debt remains (*oo*).

A new mortgage made under the terms of a debenture trust deed which does not increase the total amount secured, need not be registered.

Bristol Breweries, Limited v. **Abbot,** [1908] 1 Ch. 279.

Similarly, separate mortgages of ships to trustees for debenture-holders need not be registered.

Cunard S.S. Co. v. Hopwood, [1908] 2 Ch. 564.

The certificate of registration given by the registrar is conclusive.

Re Yollond, Limited, [1908] 1 Ch. 152.

The date when the charge or debentures are "**created**" seems to mean the date when the instrument was executed (*p*); but in the case of debentures not until some of the series have been issued.

Re Spiral Globe, Limited (No. 2), [1902] 2 Ch. 209.

August, 1900, the company resolved to issue 20 debentures and sealed them. September 24th, 1900, 10 debentures were issued to debenture-holders. January, 1901, the other 10 were issued:—

(*n*) Companies Act, s. 73.
(*o*) *Ibid.*, s. 73 (2).
(*oo*) *Parkes Garage* (*Swadlincote*), *Ld.*, [1929] 1 Ch. 139.
(*p*) *Esberger* v. *Capital & Counties Bank*, [1913] 2 Ch. 366.

Held, the whole issue should have been registered within 21 days after September 24th, 1900.

But where the trust deed was dated before 1901 and the debentures were issued after 1901, registration was held not to be required (*q*).

An agreement to issue debentures usually creates an equitable charge at once.

(1) If so, the agreement should be registered within 21 days (*r*).

(2) If not, *i.e.*, if it is merely an agreement to give a charge in the future, it need not be registered (*s*).

But such a transaction is open to suspicion (*Re Jackson and Bassford*, [1906] 2 Ch. 467); and if the charge is created within 3 months before the winding-up, it may be void as a fraudulent preference (see p. 287) or under sect. 266 (see pp. 287, 288).

If debentures are not registered within the proper time, a judge may order the **time for registration to be extended,** provided the default is accidental or due to inadvertence or some other sufficient cause or not such as to prejudice the position of creditors or shareholders, or on any other grounds which may be just and equitable (*t*).

The necessity for an application to the court can generally be avoided by cancelling debentures which have been issued without proper registration, and issuing new ones in their place (see *Defries & Co., Limited*, [1904] 1 Ch. 40). But there is the risk

(*q*) *Dublin Distillery* v. *Doherty*, [1914] A. C. 823.

(*r*) The registration of a series of debentures may protect documents of the same series which owing to some technical defect can only be upheld as agreements for debentures. See *Fire Proof Doors, Ltd.*, [1916] 2 Ch. 142.

(*s*) *Gregory, Love & Co., Ld.*, [1916] 1 Ch. 203.

(*t*) Companies Act, s. 85.

that such debentures may be void if the company is wound up within 6 months.

The order must be made "without prejudice to the rights of parties acquired prior to the time of actual registration."

Re Spiral Globe, Limited, [1902] 1 Ch. 396 (*u*).

The effect of such a clause is not so great as appears at first sight; for an ordinary unsecured creditor does not "acquire any rights" against the property of the company until the company commences to be wound up.

Thus—

(1) If the debentures are registered before a winding-up has commenced, the debenture-holders have priority over the unsecured creditors (*x*) (*Re Ehrmann Bros., Limited,* [1906] 2 Ch. 697).

(2) If the debentures are registered after a winding-up has commenced, the unsecured creditors rank equally with the debenture-holders (*Re Anglo-Oriental Carpet Co.,* [1903] 1 Ch. 914).

But a subsequent incumbrancer, even *with notice,* has priority if registered before the date of the order.

Monolithic Building Co., [1915] 1 Ch. 643.

The application may be made either by summons or by motion in the Chancery Division.

(*u*) And see *Re I. C. Johnson & Co., Limited,* [1902] 2 Ch. 101.

(*x*) If, therefore, the position of the unsecured creditors is likely to be seriously affected, they should have an opportunity of being heard before the order is made (*Cardiff Workmen's Cottage Co., Limited,* [1906] 2 Ch. 627). The consent of the principal creditor was required in *Herts & Essex Waterworks, Limited,* [1909] W. N. 48.

SECTION 5.

Transfer of Debentures.

Debentures to bearer are transferred by simple delivery.

Debentures to registered holder are transferred in the manner specified in the conditions indorsed thereon.

The company cannot register a transfer unless a proper instrument of transfer is produced (*y*).

The form is generally similar to a transfer of shares (see p. 106, *ante*). If no form is specified, they may be assigned, like any other chose in action, by writing signed, with written notice to the company.

Debentures are transferable, unless the contrary is agreed, subject to all equities, *e.g.*, after a resolution to wind up the company a shareholder can only assign his debentures subject to his liability for calls due on his shares.

Re China Steamship Co. (1869), L. R. 7 Eq. 240.

Low held sixty shares in the company, and five debentures. The company was wound up, and Low assigned his debentures to M. Later, calls were made on the sixty shares:—**Held**, M. took the debentures subject to the company's claim for calls. And see *Athenæum Society* v. *Pooley* (1858), 3 De G. & J. 294 (see p. 169).

But this is not so if the debentures are negotiable (see p. 173, *ante*), or if the debtor company has precluded itself from setting up such equities.

Re Goy & Co., [1900] 2 Ch. 154.

The debentures contained a clause that the principal and interest would be paid to any transferee without regard to the equities between the company and the transferor. A resolution

(*y*) **Companies Act, s. 63.**

was passed to wind up the company. C., a director, then transferred his debentures to R. C. had been guilty of misfeasance towards the company, but R. did not know this:—**Held,** R. takes, free from the company's claim against C.

But where the assignee is only a trustee for the assignor or his creditors, the company can enforce the equities against the transferee.

Re Brown and Gregory, Limited, [1904] 1 Ch. 627.

S. & Co. owed £1666 to the company, but held debentures in the company. S. & Co. assigned all their property, including the debentures, to P. in trust for their creditors:—**Held,** P. takes the debentures subject to the company's right to insist on payment of the debt of £1666 before paying the debt due from them and secured by the debentures.

A company can become a transferee of its own debentures (*z*).

Debentures which have been redeemed may be re-issued (*zz*), so as to rank *pari passu* with the original issue, unless

(1) the articles provide otherwise; or

(2) the company is under a contract to redeem the debentures; or

(3) the company has done some act showing an **intention to cancel** the debentures (*a*).

(*z*) *Re George Routledge & Sons*, [1904] 2 Ch. 474.

(*zz*) As to the effect of the re-issue on registration of the debentures see *Re New Omnibus Co.*, [1908] 1 Ch. 621. A transfer of a debenture which had been issued under a contract to re-issue the debenture every 14 days, although it apparently avoided the necessity for registration, was held valid, as against the company, in favour of a *bonâ fide* holder for value without notice in *Re Renshaw & Co.*, [1908] W. N. 210.

(*a*) Companies Act, s. 75. Before 1929 the debentures could not be re-issued unless the company had purported to keep them alive.

Debentures redeemed under a contract to redeem them cannot be re-issued (*b*).

SECTION 6.

Issue of Debentures (*c*).

Debentures (unlike shares) **may be issued at a discount** without any restrictions, if this is allowed by the Articles of the company.

The reason is that they **do not form part of the capital of the company.**

Thus, suppose a company has tried to issue several £100 debentures with interest at four per cent., but they are not taken up; there would be nothing to prevent the company issuing other debentures at five per cent.; but nearly the same result is obtained by issuing each of the old £100 debentures for £80. The company will then have to pay £4 annually on each £80 lent, which amounts to £5 per cent. Besides this there is the gradual increase in the value of the debentures. Thus if they are to be paid in twenty years, the capital value should increase by about £1 per year, thus in effect further increasing the rate of interest.

Re Regent's Canal Co. (1876), 3 Ch. D. 43.

The company issued 100 debentures of £100 each at £95 each. Forty of these were deposited with creditors as security:—**Held,** this was a good charge. The validity of the issue was not disputed (*d*).

On winding-up, the company's power to issue debentures ceases. But the company can allot the rest of a series already issued at any time before winding-up, even after an action has been commenced by debenture-holders to enforce their security.

(*b*) *Re Russian Petroleum Co.*, [1907] 2 Ch. 540.
(*c*) For the meaning of the term "issue" of debentures, see *Perth Electric Tramways, Limited*, [1906] 2 Ch. 216, at p. 219.
(*d*) And see *Mosely* v. *Koffyfontein Mines*, [1904] 2 Ch. 108.

Hubbard & Co., W. N. (1898) 158.

Some of the debentures of an issue were not taken up. The interest fell in arrear. The debenture-holders commenced an action for a receiver. The company allotted some of the remaining debentures of the series to its solicitor as security for the costs of the defence:—**Held,** the issue was good, as the receiver had not yet been appointed.

If money is advanced to the company under an agreement that debentures shall be issued, this creates a charge at once in equity.

Pegge v. Neath, etc., Co., [1898] 1 Ch. 183.

The company borrowed money from P. and gave him a promissory note, and undertook to issue to P., when called on, second mortgage debentures to that amount. An action was brought by the first and some of the second debenture-holders to enforce their security, and they obtained judgment. Then P. claimed to have his second debentures issued to him:—**Held,** P. was in equity a holder of second mortgage debentures to the amount of his debt.

A debenture issued in an irregular manner may be treated as an agreement to give a debenture (*dd*).

Specific performance of an agreement to give debentures may be enforced against a company: and the company can specifically enforce against another person an agreement to take debentures (*e*).

Before the Act of 1907 the latter agreement could not be specifically enforced, since, as a general rule, you cannot get specific performance of a contract to lend money (*ee*).

(*dd*) *Re Fireproof Doors Ltd.*, [1916] 2 Ch. 142. An agreement to give a future contingent charge does not operate as an agreement to give a debenture. *Gregory, Love & Co.*, [1916] 1 Ch. 203.

(*e*) Companies Act, s. 76. But not if the company has forfeited the debentures for non-payment of instalments. *Kuala Pahi Rubber Estates* v. *Mowbray*, [1914] W. N. 321.

(*ee*) *South African Territories, Ltd.* v. *Wallington*, [1898] A. C. 309.

SECTION 7.

Remedies of Debenture-holders.

A debenture-holder who wishes to realise his security and get his money back, may make use of all or any of the following remedies.

1. He may sue on behalf of himself and all other debenture-holders to obtain payment or to **enforce his security by sale.** The court then appoints a receiver and (if necessary) a manager (see p. 191), and declares the debentures to be a charge on the assets of the company, directs inquiries as to who are debenture-holders, etc., and orders a sale of the property (*f*).

The holder of one of a series of debentures cannot sell the property charged unless the debentures contain an express power of sale. *Blaker* v. *Herts and Essex Waterworks* (1889), 41 Ch. D. 406.

Any surplus of the proceeds of sale after payment of the principal, interest and costs due to debenture-holders is payable to the company (*g*).

2. He may **appoint a receiver,** if the conditions give him power to do so (see section 8, p. 186, *post*).

3. The debenture-holder may apply to the court for **foreclosure,** which may extend even to the uncalled capital of the company (*Sadler* v. *Worley*, [1894] 2 Ch. 170).

(*f*) **Note as to procedure.**—The company frequently consents to such an application; if so, an order is first made appointing a receiver, and later a sale is ordered on a motion for judgment (see *Crigglestone Coal Co.*, [1906] W. N. 20). For this purpose a statement of claim should be prepared (*Re Dupont*, [1906] W. N. 14), and should be supported by evidence. The statement of claim can only be dispensed with if the company consents to the order. (*Re Kitson Empire Co.*, [1910] W. N. 154). For the form of the order, see *Crigglestone Coal Co.* (*ubi sup.*), and *re Addressograph*, [1909] W. N. 260.

(*g*) As to the order of payment, see *Calgary & Medicine Hat Co.*, [1908] 2 Ch. 652.

But this remedy is not usual, as it is necessary for all the debenture-holders of every class to be parties to the action.

Elias v. Continental Co., [1897] 1 Ch. 511.

Four out of five debenture-holders sued for foreclosure:— **Held,** where the legal estate is in the mortgagees and foreclosure means simply depriving the mortgagor of his equity of redemption, it is not necessary for all parties to be present: but where it involves **conveying the property of the company to the mortgagees,** they must all be present.

4. He can present a petition for winding up the company, as he is a creditor for the amount of his principal and interest (see p. 256) but not for any premium paid on redemption, unless the debenture expressly so provides (*h*).

5. He may have the property sold, if the debenture trust deed gives the trustees a power of sale.

6. If the company be insolvent, and his security is insufficient, he may value his security and sue for the balance of his debt or give up his security and sue for the whole debt.

The proceeds recovered by enforcing his security may be applied by the debenture-holder in payment of his costs, principal debt and interest, up to date of payment (*i*). But if his security is insufficient, and the company is insolvent, he cannot prove for interest which became due after winding up; nor can he get interest out of his security when arriving at a balance for which he can prove in the winding up (*j*).

(*h*) *Re Simmer & Jack East,* [1913] W. N. 41.
(*i*) *Wallace* v. *Universal Automatic Co.,* [1894] 2 Ch. 555.
(*j*) *Quartermaine's Case,* [1892] 1 Ch. 639, and see p. 286, *post.*

A plaintiff who sues on behalf of himself and all other debenture-holders of the same class, has a first claim against the proceeds for his costs.

A second debenture-holder who is made a party gets his costs only out of the surplus (if any) after payment of the first debentures (*k*).

The amount of costs that he may recover depends on a rule at first sight rather curious.

(1) If the assets are **insufficient** to pay the debentures of his class in full, he gets solicitor and client costs.

(2) If the assets are sufficient to pay the debentures of his class in full, but not sufficient to pay the subsequent debentures, he only gets party and party costs (*l*).

The reason of this is that in the first case the costs come entirely out of the pockets of the persons whose right he has been enforcing; while in the second, they come out of the residue of the fund which is going to persons not benefited by his exertions (*m*).

SECTION 8.

Receivers.

A debenture-holder can appoint a receiver under the express power in his debenture (see condition 14 on p. 161, *ante*), or he can apply to the court.

(*k*) *Re Clayton Engineering Co.*, [1904] W. N. 28, except in special cases where he has rendered valuable services to the debenture-holders as a whole.

(*l*) But if the plaintiff cannot pay to his solicitor the difference between party and party costs and solicitor and client costs, the solicitor has a lien on the property recovered in the action for the difference (*Re W. C. Horne & Sons, Limited*, [1906] 1 Ch. 271; and see form of order on p. 277).

(*m*) *New Zealand Midland Rail. Co.*, [1901] 2 Ch. 357; and see *Re Clayton Engineering Co.*, [1904] W. N. 28.

The advantage of getting a receiver **appointed by the court** is that **any interference with him is a contempt of court**, and no proceedings can be commenced against him or in respect of the property in his hands without leave of the court (*n*).

Re Metropolitan Amalgamated Estates, Ltd.,
[1912] 2 Ch. 497.

The company made a specific first mortgage of leaseholds. Later the company issued debentures charged on all its assets.

1st Feb. 1912. The mortgagee appointed a receiver under his mortgage deed, but did not give notice to the tenants of the leaseholds.

2nd Feb. A debenture-holder obtained the appointment of a receiver by the court.

The mortgagee was not a party to the action.

8th Feb. The mortgagee gave notice to the tenants of the appointment of his receiver.

27th Feb. The mortgagee gave notice of a motion to the court for leave to take the rents notwithstanding the appointment of the debenture-holder's receiver.

Rents were paid to the receiver between the 2nd Feb. and the 27th Feb. :—**Held**, these rents were properly paid to the receiver on behalf of the debenture-holder.

(*Note.*—When a receiver is appointed on the application of a second mortgagee, the order is usually made "without prejudice to the rights of prior incumbrancers." If these words had been added to the order in the above-stated case, the mortgagee would have been entitled to take the rents without applying to the court. *Underhay v. Read*, 20 Q. B. D. 209.)

One advantage of appointing a receiver under the powers given by the debenture is that he is in a better position if the company is wound up and a liquidator appointed.

(*n*) No proceedings can be taken against the receiver in any other action. *Re Maidstone Palace, Ld.*, [1909] 2 Ch. 283. As to proceedings by the debenture-holder against the company, see *Cleary* v. *Brazil Railway*, [1915] W. N. 178.

Henry Pound, Son & Hutchins (1889), 42 Ch. D. 402.

Debenture-holders were allowed to appoint a receiver (under a clause similar to clause 14 on p. 161) to take possession, although a liquidator had already been appointed.

But where a receiver has been appointed by the court, the court will usually put the liquidator in his place to act as both receiver and liquidator (*Re Joshua Stubbs, Limited*, [1891] 1 Ch. 475); but see *Re Karamelli and Barnett, Limited*, [1917] 1 Ch. 203. The court will sometimes replace a receiver appointed by one debenture-holder by a receiver appointed by the court; *Re Slogger Automatic Co.*, [1915] 1 Ch. 478.

A company or other corporation cannot be appointed to act as a receiver (*o*).

Every invoice or business letter on which the name of the company appears after the appointment of a receiver must contain a statement that a receiver has been appointed (*p*).

A receiver appointed by the debenture-holders under a power in the debenture **is the agent of the debenture-holders**, and they are therefore liable on his contracts, unless the power to appoint a receiver expressly states that he is to be the agent of the company. (*Robinson Printing Co.* v. *Chic, Limited*, [1905] 2 Ch. 123.)

Note that in this respect he differs from a receiver appointed by an ordinary mortgagee under sect. 101 of the Law of Property Act, 1925, for such a receiver is expressly declared by sect. 109 (2) of the Act to be the agent of the mortgagor, and for this reason the receiver should be expressly declared to be the agent of the company by the conditions on the debenture (see condition 14 on p. 161).

A condition which merely incorporated sect. 24 of the Con-

(*o*) Companies Act, s. 306.
(*p*) Companies Act, s. 308.

veyancing Act, 1881, was held not to be sufficient for the purpose. (*Deyes* v. *Wood*, [1911] 1 K. B. 806.)

On a winding up the receiver ceases to be the agent of the company, but he does not thereby become the agent of the debenture-holders. (*Gosling* v. *Gaskell*, [1897] A. C. 575.)

In either case he is not personally liable on contracts which he makes (*pp*).

A receiver appointed by the court is the agent of the court, and, as the court cannot be liable, the receiver becomes liable personally on his contracts. He is, however, entitled to be indemnified out of the assets of the company in priority to the rights of the debenture-holders (*q*).

A receiver appointed by the court is considered to have been appointed for the benefit of all persons interested in the assets.

He must not break contracts merely because he thinks this will suit the debenture-holders (*r*); but he is not bound to borrow money to perform contracts which can only be completed at a loss (*s*).

If the court has ordered the receiver to take proceedings, the plaintiff has no right to stop such proceedings the question being in the discretion of the court (*t*).

The receiver cannot create a lien in favour of certain creditors without leave of the court (*x*).

A receiver may be appointed by the court in a

(*pp*) *Gosling* v. *Gaskell*, [1897] A. C. 575.
(*q*) *Burt* v. *Bull*, [1895] 1 Q. B, 276; and *Re Glasdir Copper Mines, Limited*, [1906] 1 Ch. 365; and *London United Breweries, Limited*, [1907] 2 Ch. 511.
(*r*) *Newdigate Colliery, Ld.*, [1912] 1 Ch. 468.
(*s*) *Re Thames Ironworks, Ld.*, [1912] W. N. 66.
(*t*) *Viola* v. *Anglo-American Co.*, [1912] 2 Ch. 305.
(*x*) *Moss Steamship Co.* v. *Whinney*, [1912] A. C. 254.

"debenture-holders' action" (commenced by one debenture-holder on behalf of himself and all the others);

(1) If the principal money has become payable under condition 10 (see p. 161).

Even if the money became due after the writ was issued (*Re Carshalton Estate, Limited*, [1908] 2 Ch. 62).

or (2) If the Company is wound up, even though the money is not expressly made payable in that event (*y*).

or (3) **If the security is in jeopardy,** even if there has been no default in payment of interest, and no winding up.

E.g., if a judgment creditor has levied execution (*z*), or if a judgment remains unsatisfied (*a*), or if the company has closed down its business or even one of its chief branches (*aa*), or if the company proposes to distribute its reserve fund among its members by way of dividend leaving the debentures insufficiently secured (*b*).

McMahon v. North Kent Iron Works, [1891] 2 Ch. 148.

The works had been closed and the men discharged. The company was wholly insolvent; but no case had arisen under condition 10. A receiver was appointed.

Mere insufficiency of the security does not amount to jeopardy (*c*).

If there is no board of directors (*e.g.* if they are all "*alien enemies*"), or if disputes on the board have led to a dereliction by

(*y*) And even if the winding up is for the purpose of re-construction only. *Re Crompton & Co., Ld.*, [1914] 1 Ch. 954.
(*z*) *Edwards* v. *Standard Rolling Stock Syndicate*, [1893] 1 Ch. 574.
(*a*) *Re London Pressed Hinge Co.*, [1905] 1 Ch. 576.
(*aa*) *Re Braunstein & Marjolaine, Ld.*, [1914] W. N. 335.
(*b*) *Tilt Cove Copper Co.*, [1913] 2 Ch. 588.
(*c*) *New York Taxi Co.*, [1913] 1 Ch. 1.

the directors of their duties, a receiver and manager may be appointed (*cc*).

The receiver, when appointed by the court, must give security for the safety of the assets in his hands. If the plaintiff debenture-holder wishes him to act at once (*i.e.*, before he finds security), the plaintiff must undertake to be responsible until he gives security. The appointment of a receiver must be notified to the registrar (*d*). His remuneration can be fixed by the Court (*dd*).

He must make the preferential payments (see p. 283) required to be made by sect. 78 of the Companies Act. If he fails to do this, he may be liable in damages (*e*).

The court may supersede a receiver appointed by a debenture-holder, if the appointment was not for the benefit of all the debenture-holders (*Re Maskelyne British Type-writer*, [1898] 1 Ch. 133).

If the company is being wound up by the court, the court may appoint the Official Receiver to be receiver (*f*).

The court may also appoint a manager, if it is necessary.

On the appointment of a receiver, the assets become specifically charged in favour of the debenture-holders, and the power of the company to deal with them in the ordinary course of business ceases, although it continues to exist as a company until it is wound up (*g*).

If therefore it is necessary to carry on the business, the court usually appoints the receiver to be **receiver and manager.**

A manager is not generally appointed except to carry on the business for the purpose of selling it as a going concern; but this rule is not inflexible.

(*cc*) *Trade Auxiliary Co.* v. *Vickers*, L. R. 16 Eq. 303; *Stanfield* v. *Gibbon*, [1925] W. N. 11.
(*d*) Companies Act, s. 86. Penalty £5 per day.
(*dd*) Companies Act, s. 309.
(*e*) *Woods* v. *Winskill*, [1913] 2 Ch. 303.
(*f*) Companies Act, s. 307.
(*g*) *Moss Steamship Co.* v. *Whinney*, [1912] A. C. 260; *Parsons* v. *Sovereign Bank*, [1913] A. C. 160.

Re Victoria Steam Boats, [1897] 1 Ch. 158.

The company was formed to work passenger steamers on the Thames and also to carry on ferry work at Greenwich and Woolwich, under contracts with the Great Eastern Railway. The company was wound up and stopped the passenger service. The debenture-holders applied for a manager of the ferry business, on the ground that if the contracts were broken, there would be a heavy loss to the debenture-holders:—**Held,** the court has a discretion and will appoint a manager in this case, for though there is no immediate prospect of a sale, there will probably have to be a realisation some day.

If, however, there is no power to sell the business, a manager will not be appointed.

Marshall v. South Staffordshire Tramways, [1895] 2 Ch. 36.

A tramway company (under the Tramways Act, 1870) mortgaged all its undertaking:—**Held,** generally the owner of an equitable charge has a right to a judicial sale. "But this does not extend to . . . an undertaking which has been acquired under statutory powers for public purposes, if those purposes will be defeated or . . . seriously affected by a judicial sale." As there is no power of sale, a manager cannot be appointed.

A manager is appointed for a limited period, usually three months. If he acts after the expiration of this period without a further order, his expenses may be disallowed. (*Wood Green Laundry, Co. Ltd.*, [1918] 1 Ch. 423.)

The court may authorise the **receiver to borrow money** to be a first charge on the property of the company in priority to all the debentures, if it is required for the purpose of preserving the business.

Greenwood v. Algesiras Railway Coy., [1894] 2 Ch. 205.

The court allowed the receiver to borrow £10,000 for the repair of landslips on a Spanish railway: for if they had not been repaired, the Government would have declared the railway forfeited for discontinuance of traffic.

The claims of the persons who lend the money will

then have priority over the claims of the debenture-holders (*h*), but will be postponed to the receiver's right of indemnity (*i*).

Leave to borrow money in this way will only be granted where there is clear evidence of advantage.

Securities Investment Corporation v. Brighton Alhambra (1893), 68 L. T. 249.

The receiver appointed by debenture-holders of a music hall had already borrowed £1000, and had carried on the business for some time at a loss. He applied for leave to borrow another £1000, in order to sell the business as a going concern :—**Held,** leave will not be granted, for this is a mere speculation.

If the receiver exceeds the amount authorised, his right of indemnity does not extend to the excess, even if he acted *bonâ fide,* unless it was reasonably necessary for him to borrow without applying to the court (*Re British Power, etc., Co., Limited,* [1906] 1 Ch. 497) (*k*).

(*h*) *Re Glasdir Copper Mines, Limited,* [1906] 1 Ch. 365.
(*i*) *A. Boynton, Limited,* [1910] 1 Ch. 519. As to priorities where default is set off against indemnity see *Re British Power Traction Co.,* [1910] 2 Ch. 470.
(*k*) And S. C., [1907] 1 Ch. 528 as to what was authorised in that case.

CHAPTER XIII.

UNDERWRITING.

AN **underwriting agreement** is an "agreement whereby, previously to an offer of a company's shares to the public for subscription, some person undertakes, in consideration of a commission, to take the whole or a portion of such (if any) of the offered shares as may not be subscribed for by the public" (*a*).

Similar agreements may be made for underwriting debentures.

When a company offers a number of shares to the public, it is very often most important to secure that the whole issue shall be taken up. Even if the shares are almost certain to be taken, unforeseen events may happen, such as the outbreak of war or attacks against the company in the newspapers, which would endanger the success of the issue.

Consequently, a company is usually willing to pay a small commission on all the shares offered to the public to any one who will agree to take all the shares (if any) that the public do not take.

Brokerage is different. If the company agrees with A. that if he takes so many shares, the company will allow him a commission of £2 per cent., this may amount to issuing shares at a discount; but if A. is a

(*a*) Rawlins and Macnaghten, p. 220.

broker, and employed as such by the company for **placing** shares, a proper commission or "brokerage" may be paid.

A person who "**places**" shares does not take them himself, but finds other persons who will take them.

A reasonable brokerage has always been allowed.

Metropolitan Coal Association v. Scrimgeour,
[1895] 2 Q. B. 604.

A payment of two and a half per cent. to brokers was held to be valid.

Underwriting commission may only be paid under certain conditions. By section 43 of the Companies Act no company may apply any of its shares or capital, either directly or indirectly, in the **payment of any commission, discount or allowance** to any person in consideration of his subscribing or agreeing to subscribe for or procure subscriptions for any shares unless—

(1) the payment of the **commission is authorised in the articles,**

(2) the commission does not exceed 10 per cent. of the price at which the shares are issued or the amount or rate authorised by the articles (whichever is the less), and

(3) the amount or rate agreed to be paid is **disclosed in the prospectus** or statement in lieu of prospectus, or (in case of a private company) in a special statement filed for the purpose (*c*).

Sometimes the underwriter enters into subsidiary contracts with other persons to relieve him of some of

(*c*) This section does not affect the power to pay brokerage, s. 43 (3).

his liability for a commission. This is called "sub-underwriting." The commission paid to sub-underwriters need not be disclosed in the prospectus (*d*).

A sub-underwriter who gives an authority to apply for shares in his name cannot withdraw the authority (*dd*).

The result is that a company cannot apply its capital or shares in the payment of underwriting commission except in the manner mentioned in the Act.

This provision was sometimes used as an indirect way of issuing shares at a discount: see *Keatinge* v. *Paringa Mines, Ld.*, [1902] W. N. 15, but by the Act of 1929 the rate of commission or discount cannot exceed 10 per cent.

The Act does not prevent a company from giving, as the consideration for underwriting shares, an option to take further shares at par (*e*).

Hilder v. Dexter, [1902] A. C. 474.

Shares were offered to fourteen persons on the terms that for each share taken up, the applicant should have an option of taking within a year one other share at par; and if he should take up this share within the year, then he should have a further option of taking up another share at par within the next year:— **Held,** this is valid. The company is not applying "any of its shares or capital," and is not paying "a commission, discount or allowance." The result is, in any case, that the company gets "par" for the shares.

These rules apply, whether the payment is made direct by the company or by the person to whom the shares are allotted (*f*).

The contract usually takes the form of an underwriting letter, which may be either—

(*d*) Sched. IV. (10).
(*dd*) *Olympic Fire & General Co.*, [1920] 2 Ch. 341.
(*e*) Taking a share at "par" means, giving £100 for a £100 share. To give less, is to take at a **discount**; to give more, is to take at a **premium.**
(*f*) Companies Act, s. 43 (2).

(1) An offer, which does not become binding until the company communicates its acceptance (*g*).

Ex parte Stark, [1897] 1 Ch. 575.

S., by letter, offered to subscribe or find securities for 10,000 shares, or so many as the company should agree to issue to him:—**Held,** this was merely an offer.

Or,

(2) An acceptance of the terms offered by the company.

Carmichael's Case, [1896] 2 Ch. 643.

C. signed a letter agreeing to take 1000 shares in consideration of a certain commission:—**Held,** this was a complete contract.

Form of Underwriting Agreement (h).

The agreement usually contains the following terms—

(1) The underwriter agrees to underwrite a certain number of shares.
(2) All the shares are to be offered to the public on the terms of a specified prospectus (*i*).
(3) If the public do not take up all the shares, the underwriter is to take up the balance.
(4) The underwriter authorises the company to allot him such balance of shares.
(5) The company is to pay the underwriter a certain percentage of the nominal value of the shares underwritten.

The amount of commission paid in respect of shares and debentures must be stated in every prospectus and in the annual summary, and the rate of commission paid in respect of debentures must be entered in

(*g*) And see *Ormerod's Case*, [1894] 2 Ch. 474, where the agreement was to take shares "if and when called upon."

(*h*) See Palmer's Precedents, Part I. Chap. IV.

(*i*) If the terms of the prospectus are afterwards altered, the underwriting agreement may become void. *Warner International Co.* v. *Kilburn*, [1914] W. N. 61.

the register of mortgages kept by the registrar (*k*), and in every balance sheet of the company until the amount paid has been written off (*l*).

When **debentures** are underwritten, the amount paid or payable must be disclosed in any prospectus or notice in lieu of prospectus (*m*), and it must also be disclosed in the annual summary and balance sheet and particulars must be entered when the debenture is registered. Sect. 79 (9).

(*k*) Companies Act, s. 79 (9).
(*l*) Companies Act, s. 44 (1).
(*m*) Companies Act, Scheds. IV. and V.

CHAPTER XIV.

DIRECTORS.

Section 1.

Position of Directors.

A COMPANY registered after the Act of 1929 takes effect must have at least two directors (*a*). A private company or a company formed before 1929 need not have directors (*b*). All the members together might carry on the business, or there might be a "council"; but a company usually appoints a certain number to be managers of the business, to make contracts for the company, and to take care of the property of the company, and they are generally called directors. Thus, directors are sometimes said to be (1) **Trustees,** and sometimes (2) **Agents or managers.** Their exact position is hard to define.

(1) The directors are to some extent **trustees for the company.** Thus, the Statute of Limitations applies to their actions in the same way as to trustees.

Re Lands Allotment Co., [1894] 1 Ch. 616.

The company had no power to invest in shares of other companies. The directors invested £35,000 in shares of the

(*a*) Companies Act, s. 139.
(*b*) Or the sole director may be a limited company (*Re Bulawayo Co.*, [1907] 2 Ch. 460).

Building Securities Co. in 1885. The company was wound up in 1893, *i.e.* more than six years later:—**Held**, the directors were protected under the Trustee Act, 1888, as there was no fraud (also they were not liable as the shares were taken in payment of a debt).

Directors are trustees for the company of their power of approving transfers, issuing and allotting shares (*c*), and making calls.

Alexander v. Automatic Telephone Co., [1900] 2 Ch. 56.

For facts, see p. 119 above.

LINDLEY, M.R.: "The Court of Chancery has always exacted from directors the observance of good faith towards shareholders . . . and directors who so use their powers as to obtain benefits for themselves at the expense of the shareholders, without informing them of the fact, cannot retain those benefits, and must account for them to the company."

Directors are trustees for the company and **not for the individual shareholder.**

Percival v. Wright, [1902] 2 Ch. 421.

Directors bought shares from a shareholder while they were negotiating for the sale of the company at a very high price, but did not tell him of this fact:—**Held**, the purchase of the shares was good.

And they are not trustees for third parties who have made contracts with the company (*cc*).

Directors do not have to account so strictly as the trustees of, *e.g.*, a marriage settlement, and in many ways they differ from ordinary trustees.

(*c*) *Punt* v. *Symons & Co., Limited*, [1903] 2 Ch. 506, *Piercy* v. *S. Mills & Co.*, [1920] 1 Ch. 77 (where the directors issued shares to themselves for the purpose of getting the majority of the voting power).

(*cc*) *Bath* v. *Standard Land Co.*, [1911] 1 Ch. 618.

Smith v. Anderson (1880), 15 Ch. D. 247.

JAMES, L.J. : "A trustee is a man who is the owner of property and deals with it as principal, as owner, and as master, subject only to an equitable obligation to account to some persons to whom he stands in the relation of trustee. . . . The office of a director is that of a paid servant of the company. A director never enters into a contract for himself, but for his principal . . . he cannot sue on such contracts, nor be sued on them (unless he exceeds his authority)."

Directors are described as trustees, agents, or managing partners, not as exhausting their powers or responsibilities, but as indicating useful points of view. **"It does not matter much what you call them,** so long as you understand what their true position is, which is that they are merely **commercial men, managing a trading concern for the benefit of themselves and all other shareholders** in it" (JESSEL, M.R., 10 Ch. D. 452).

(2) Directors are **agents for the company.** When they make contracts for the company, they are not liable themselves, unless they contract in their own names; then the other party can sue either the company or the directors, at his option.

Even if they make a contract which is *ultra vires*, and so cannot bind the company, the directors do not render themselves liable (except sometimes on an implied warranty of authority). See *Weeks* v. *Propert*, p. 153.

If the act done is not beyond the powers of the company, but only beyond the powers of the directors, then—

(1) If the contract is made with a member, it is voidable.

(2) If made with an outsider who had no notice of the want of powers, it binds the company.

Such an act of directors may also be made valid by the acquiescence of **every** shareholder.

SECTION 2.

Appointment of Directors.

The first directors are usually named in the Articles.—This is not now a valid appointment unless each of the proposed directors has—

(a) signed and filed with the registrar a consent to act as director; and

(b) either—

(i.) signed the memorandum for his qualification shares; or

(ii.) taken up and paid for them; or

(iii.) signed a contract to take them from the company and pay for them (*d*); or

(iv.) signed a declaration that a number of shares sufficient to qualify him are registered in his name (*e*).

If not named in the Articles, the first directors are appointed by the subscribers to the Memorandum. This must be done either—

(1) by the **majority at a meeting** of subscribers; or

(2) by a writing signed by **all** the subscribers.

(*e*) Companies Act, s. 140. This does not apply to a private company, or a company which was a private company and was afterwards converted into a public company.

If they do not meet, **all** the subscribers must sign the appointment, unless the Articles provide otherwise. See—

John Morley Building Co., [1891] 2 Ch. at p. 392, and **Re Great Northern Salt Works** (1890), 44 Ch. D. 472.

The company adopted Table A. (see p. 46, *ante*), which contains no provisions on this subject. A meeting of three of the seven subscribers appointed A., B., C., and D. as directors. Later, all seven subscribers signed a document appointing A., B., C., and E. as directors:—**Held,** the first appointment was bad, the second good.

The way in which **subsequent appointments of directors** are to be made is usually specified in the Articles, *e.g.*, by the company in general meeting, or by the continuing directors. If no provision is made, or if the directors fail to appoint any one, the company in general meeting has power to appoint new directors (*f*).

Power may be given to an outsider to appoint directors: *British Murac Syndicate* v. *Alperton Rubber Co.*, [1915] 2 Ch. 186.

Where the Articles give power to a director to assign his office to another, the assignment is not effective unless approved by a special resolution (*ff*).

A company must keep a register of its directors, containing their names, and any former names, their addresses, and their nationality, showing any change of nationality, and send copies of the register to the registrar, and must also notify to the registrar any change among its directors (*g*).

(*f*) *Barron* v. *Potter*, [1914] 1 Ch. 895.
(*ff*) Companies Act, s. 151.
(*g*) Companies Act, s. 144.

SECTION 3.

Quorum.

A **quorum** is the number of directors who must be present at any meeting.

The **minimum number** is the number of directors who must be holding office at any time.

If a **minimum number** of directors is fixed by the Articles, and the number falls below the minimum, the remaining directors cannot act. But the Articles may authorise the directors to act in spite of a vacancy.

Re Bank of Syria, [1901] 1 Ch. 115.

By the Articles the affairs of the company were to be conducted by a council of not less than three. Article 42 allowed the Council to act in spite of a vacancy. The numbers of the council were reduced to two. The remaining two gave certain securities:—**Held,** these securities would have been void, but were saved by Article 42.

The **quorum** of directors is usually fixed by the Articles. A quorum may be defined as "The number of directors **qualified to act** who must be present at a meeting to enable them to act as a board."

Re Greymouth Point Elizabeth Railway, [1904] 1 Ch. 32.

The Articles contained a clause the same as Article 86 (on p. 41), and two directors were to be a quorum. There were only three directors : two of these lent £2000 to the company, and the board (viz., the three directors) agreed to give them debentures to secure it. Thus, though three directors were present, two were disqualified from voting under Article 86 :—**Held,** the agreement was void (*h*).

If no quorum is fixed by the Articles, the number of directors who usually act will be sufficient; but in

(*h*) See also *North Eastern Insurance Co.*, [1919] 1 Ch. 198.

any case, notice of the meeting must be given to all the directors (*i*).

SECTION 4.

Qualification.

There need not be any qualification for directors, but the Articles usually provide that no person shall act as director unless he holds a certain number of shares (*j*) or stock. See Art. 84 on p. 41, *ante*.

If any qualification is fixed, then—

(1) It must be **disclosed in the prospectus** (*k*);

(2) Each director **must take his qualification shares within two months** of his appointment, otherwise he vacates office, and renders himself liable to a fine of £5 for every day that he acts as director (*l*).

(3) The **company cannot commence business until every director has taken up his qualification shares** and paid on them, if payable in cash, the same proportion as the public have to pay on application and allotment (*m*).

The Articles frequently provide that the qualification of a director shall be the holding of a certain number of shares "in his own right." It would perhaps be better to provide that he must hold them "beneficially," for the former words are satisfied if the

(*i*) *Lyster's Case*, L. R. 4 Eq. 233.
(*j*) Shares in respect of which warrants to bearer have been issued, cannot be used as qualification shares. Companies Act, s. 141 (2).
(*k*) Companies Act, Sched. IV.
(*l*) *Ibid.*, s. 141.
(*m*) Companies Act, s. 94.

director holds the shares as "trustee for others" (*n*) unless it appears on the register that he is merely a trustee.

Boschoek Proprietary Co. v. Fuke, [1906] 1 Ch. 148.

A director was entered on the register as the holder of shares as liquidator of another company :—**Held,** he was not qualified.

And the director must hold the shares in such a way that the company may safely deal with him as owner of the shares.

Sutton v. English & Colonial Co., [1902] 2 Ch. 502.

The qualification of a director was the holding of 100 shares "in his own right." S., a director, held 1000 shares. S. became bankrupt; his trustee in bankruptcy gave notice to the company that he claimed the shares, but did not wish to be registered for a few days. The board of directors excluded S. as being disqualified :—**Held,** S. was disqualified.

Shares which are held by a director jointly with any other person may be a sufficient qualification (*o*).

If a director takes his qualification shares as a present from the promoters, this is a breach of trust, and he must account to the company for the amount.

Hay's Case (1875), 10 Ch. App. 604.

The directors agreed with Hay, that if he would become a director they would give him forty £25 shares as his qualification. The promoters then paid Hay £1000. Hay then applied to the company for the shares, and paid £1000 for them :—**Held,** Hay holds the £1000 as trustee for the company.

If a director holds his qualification shares as a nominee or trustee

(*n*) *Cooper* v. *Griffin*, [1892] 1 Q. B. 740; *Pulbrook* v. *Richmond Consolidated Co.*, 9 Ch. D. 610; *Howard* v. *Sadler*, [1893] 1 Q. B. 1. In such a case the dividends on the shares belong to the beneficiaries, but the remuneration of the director or trustee belongs to him (*Re Dover Coal-Field, Limited*, [1908] 1 Ch. 65).

(*o*) *Grundy* v. *Briggs*, [1910] 1 Ch. 444

for a promoter, he is liable to the company for damages, which will usually be the nominal value of the shares (*p*).

A director must take up his qualification within two months of his appointment (*q*).

Disqualification and Removal.

A director becomes disqualified if he loses his qualification, or if he does any act which, by the Articles amounts to a disqualification (see Art. 85 on p. 41) *e.g.*, to hold a paid office under the company such as a paid trustee of a debenture deed (*Astley* v. *New Tivoli*, [1899] 1 Ch. 151). A director who becomes bankrupt cannot act as a director without leave of the Court (*qq*).

"Absenting himself," as in clause 85 (c) (p. 41, above), refers only to voluntary absence.

Mack's Claim, [1900] W. N. 114.

A director who lived in Belfast was seriously ill and unable to travel, and failed to attend several meetings :—**Held**, he did not vacate his office.

When the disqualification consists in "making a secret profit," the disqualification does not prevent re-election after the transaction is complete.

Re Bodega, [1904] 1 Ch. 276.

W., one of the directors, made a secret profit in 1900. He was re-elected in 1901. In 1902 the secret profit was discovered :—**Held**, the disqualification ceased as soon as it became complete in 1900, and the re-election in 1901 made him a director again.

A disqualified director ceases to be a director, and therefore cannot act. If he does act, the company may restrain him from doing so by injunction, but cannot sue him for damages.

(*p*) *London & South Western Canals, Ld.*, [1911] 1 Ch. 346.
(*q*) S. 141. (*qq*) S. 142.

An individual shareholder cannot take any proceedings against him for acting; for an individual shareholder cannot, as a rule, sue to redress a wrong done to the company. This is the rule in *Foss* v. *Harbottle* (1843), 2 Ha. 461.

Burland v. Earle, [1902] A. C. 83.

Directors instead of paying profits to shareholders invested them:—**Held,** To redress a wrong done to the company the action should be brought by the company itself, except where the **persons against whom relief is sought hold the majority of the shares** and will not allow the company to bring an action; and even then, only in cases of fraud and **ultra vires,** and not for mere informalities (*r*).

The Articles generally contain a clause that if it shall afterwards appear that the directors were disqualified, or improperly elected, any acts done by them shall be valid in spite of the disqualification. See Art. 99 on p. 42.

This applies both to dealings with outsiders and to dealings with the members of the company.

British Asbestos Co. v. Boyd, [1903] 2 Ch. 439.

B., R., and M. were directors. Two formed a quorum. The Articles contained the same clause as Article 99 (on p. 42), and it was a disqualification to hold any office of profit in the company. M. resigned. B. became secretary for two months, and was therefore disqualified. During that time B. and R. appointed D. as director. The appointment of D. was disputed:—**Held,** D.'s appointment was valid. Article 99, together with sect. 67 of the Companies Act, 1862 (now section 120), covers cases where the facts causing disqualification were known at the time, but the know-

(*r*) As to the use of the company's name see *Normandy* v. *Ind Coope, Limited,* [1908] 1 Ch. 84; and *Marshall's Valve Co.* v. *Manning & Co.,* [1909] 1 Ch. 267 (where the solicitor was held personally liable to pay the costs); and *Baillie* v. *Oriental Co.,* [1915] 1 Ch. 503 (where a special resolution had been obtained by a trick).

ledge was not present to the minds of the directors. Also, this clause applies to a question of internal management, such as the appointment of a director.

A director who has resigned cannot withdraw his resignation (*s*).

A director who is unsatisfactory may be removed by the company, but the power of removal is governed entirely by the Articles (*t*).

If there is no such power in the Articles, the company may give itself the power by special resolution.

SECTION 5.

Remuneration of Directors.

The remuneration of the directors (if any) must be stated in the prospectus (*u*) and disclosed in the balance sheets (*v*).

Directors are not entitled to any remuneration apart from express agreement.

The Articles usually provide for their remuneration; if so, it cannot be changed or increased without a special resolution (*x*).

Directors cannot get their travelling and other expenses in addition to their remuneration, unless this is expressly provided for (*y*).

If the Articles provide for remuneration, it becomes a debt due from the company to the directors, and may

(*s*) *Glossop* v. *Glossop*, [1907] 2 Ch. 370.
(*t*) *Browne* v. *La Trinidad* (1887), 37 Ch. D. 1.
(*u*) Companies Act, Sched. IV.
(*v*) Companies Act, s. 128 (1) (*c*).
(*x*) *Boschoek Co.* v. *Fuke*, [1906] 1 Ch. 148; *Kerr* v. *Marine Products* (1928), 44 T. L. R. 292.
(*y*) *Young* v. *Naval, Military, etc., Limited*, [1905] 1 K. B. 687.

be sued for, and may be paid out of capital if there are no profits.

Re Lundy Granite Co. (1872), 26 L. T. 673.

The remuneration was to be one-tenth of the profits, but not less than £100 a year. There were no profits for several years:—**Held,** the directors were entitled to £100 a year.

When a company is making no profits, the directors frequently agree to waive their remuneration, but they are not bound to do so.

There is sufficient consideration to support such an agreement, if the several directors mutually agree to waive their claims (*z*).

If the remuneration is to be "at the rate of £— a year," a director who acts for **part** of a year is entitled to a proportionate share of remuneration.

If the remuneration is to be "a yearly sum of £—," or even "£— per annum," it has been held that he will not get anything in any year unless he acts for the whole year.

Inman v. Ackroyd and Best, Limited, [1901] 1 K. B. 613.

The remuneration was to be "the sum of £125 per annum per director." I. served for one year and seven months:—**Held,** if it had been "at the rate of" £125 per annum, I. would be entitled to be paid for one year and seven months. But in this case he is only entitled to be paid £125 for the one complete year.

This decision has, however, been doubted. The remuneration in such a case appears to be apportionable under the Apportionment Act (*a*).

If a director is a trustee of his qualification shares, he may retain his remuneration for himself (*b*).

(*z*) *West Yorkshire Darracq, Ld.* v. *Coleridge*, [1911] 2 K. B. 327.
(*a*) *Moriarty* v. *Regent's Garage Co.*, [1921] 1 K. B. 423; *Diamond* v. *English Sewing Cotton Co.*, [1922] W. N. 237.
(*b*) *Re Dover Coal Field, Limited*, [1908] 1 Ch. 65.

Persons entitled to one-fourth of the voting power can require a statement by the auditors of all sums paid to the directors for the past three years, whether as directors or managers (*c*).

Compensation cannot now be paid to directors for loss of office unless the amount to be paid is disclosed to the shareholders and approved by the company (*d*).

SECTION 6.

Powers of Directors.

The powers of the directors are generally described in the Articles and there is usually a clause giving them powers of management and all the powers of the company which are not otherwise dealt with. See Art. 106 on p. 43.

This general clause is not to be construed "**ejusdem generis**," but is valid and effectual.

Re Pyle Works (No. 2), [1891] 1 Ch. 173.

Two directors of the P. Company gave a guarantee to a railway company, by reason of which the railway company agreed to carry goods on credit for the P. Company. The board of the P. Company therefore agreed that it should indemnify the two directors by a charge on its uncalled capital. The **Articles** only gave directors power to secure money when **borrowed**. The **Memorandum** gave the **company** power to issue securities generally. The Articles contained clause 106 (on p. 43) :—**Held**, the directors have power to give this charge.

The directors are the only persons who can deal with the matters thus assigned to them, and their decision cannot be overruled even by a general meeting of the company (*e*), unless

(*c*) Companies Act, s. 148.
(*d*) Companies Act, s. 150.
(*e*) *Automatic Filter Co.* v. *Cunninghame*, [1906] 2 Ch. 34; *Salmon* v. *Quin & Axtens, Limited*, [1909] 1 Ch. 311.

the Articles are altered by a special resolution, or unless the directors are acting in their own interests against the interests of the company (*f*). They should, however, communicate their policy to the shareholders, and are bound to do so, if their policy is attacked by any of the shareholders (*g*).

The shareholders may enlarge the powers of the directors, and so enable them to do anything that the company could do; or, if the directors do some act beyond their powers, the shareholders may ratify their act, if it is within the powers of the company.

A director cannot make a contract with the company; otherwise there would be a conflict between his own private interest and his duty to the company.

Any such contract will be held to be void, without any inquiry as to its fairness.

Parker v. McKenna (1874), 10 Ch. App. 118.

S. agreed to take 9000 shares on certain terms by which he was to pay £30 premium down, and the rest by instalments. The directors took over part of his bargain and released him from some of its terms:—**Held**, this was a contract in which it was important for the directors to watch the interests of the company. Therefore the contract with them was void, and they must refund the profit made on the shares (*h*).

The same rule applies to a contract by the company with another company in which a director of the first company holds shares. *Transvaal Lands Co.* v. *New Belgium, etc., Co.*, [1914] 2 Ch. 488.

There are two exceptions to this rule—

(1) A director may agree to take shares of the company.

(*f*) *Marshall's Valve Gear Co.* v. *Manning, Wardle & Co., Ld.*, [1909] 1 Ch. 267.
(*g*) *Peel* v. *London & North-Western Rail. Co.*, [1907] 1 Ch. 5.
(*h*) See also *Victors, Ld.* v. *Lingard*, [1927] 1 Ch. 323.

(2) The Articles may modify the rule and allow a director to make contracts with the company. See Art. 86 on p. 41. In such a case he must disclose his interest to the Board (*i*), and the Articles usually provide that he shall not vote.

This does not necessarily prevent him from voting on the same question at a meeting of shareholders (*j*).

The directors must act at a meeting (called a "**board meeting**") unless the Articles give them power to act otherwise. The meeting must be duly summoned; that is, due notice of the meeting must be given to every director. The meeting may be held anywhere, *e.g.*, in a passage (*k*).

The decisions of the directors take the form of **resolutions**, *e.g.*, "Resolved that shares Nos. —— to —— be allotted to ——," etc.

Minutes of the meetings are kept and signed by the chairman, but an unrecorded resolution may be proved *aliunde* (*l*).

Directors may not delegate their powers unless the Articles expressly give them power to do so.

Re Liverpool Household Stores (1890), 59 L. J. Ch. 624.

Directors, under powers expressly given by the Articles, delegated all their powers to a committee of three. This was recognised as valid.

(*i*) Companies Act, s. 149.
(*j*) *North-West Transportation Co.* v. *Beatty* (1887), 12 A. C. 589, but see *Cook* v. *Deeks*, [1916] 1 A. C. 554.
(*k*) *Smith* v. *Paringa Mines*, [1906] 2 Ch. 193.
(*l*) *Knight's Case* (1867), L. R. 2 Ch. 321; *Fireproof Doors, Ld.*, [1916] 2 Ch. 142.

The powers of directors cease on the commencement of a winding-up (*m*).

SECTION 7.

Liability of Directors.

Directors are not personally liable on the contracts which they make as agents for the company, but they may be liable—

(1) on an implied warranty of authority (see p. 153);

(2) to persons who subscribe for shares, in case of untrue statements in the prospectus (*n*); or

(3) to the company where they have acted in a manner which is **ultra vires.**

It is not necessary to prove fraud, where directors have applied capital in payment of objects **ultra vires,** *e.g.*, in the payment of dividends out of capital (*Masonic Co.* v. *Sharpe*, [1892] 1 Ch. 154, at p. 165).

(4) to the company in case of negligence.

Negligence means failure to use the care of an ordinary person in his own affairs (*o*).

Re City Equitable Fire Insurance Co., [1925] Ch. 407.

The directors left the whole control of the dealings with the uninvested funds of the company in the hands of Bevan, who was the managing director and the senior partner in the firm who acted as brokers of the company. Very large sums were left in the hands of the brokers and were lost to the company. The directors acted honestly and had entire confidence in Bevan, who was at the

(*m*) Companies Act, ss. 232 and 241 (2).
(*n*) *Ibid.*, s. 37.
(*o*) *Leeds Estate Co.* v. *Shepherd*, 36 Ch. D. at p. 804 *Brazilian Rubber Plantations*, [1911] 1 Ch. at p. 436.

time a financier of high reputation:—**Held,** the directors who passed the annual balance sheets were guilty of negligence in not ascertaining how the funds of the company appearing in the balance sheets were invested; but **held also** that the directors were excused from liability by an article which provided that they should only be responsible for "*wilful default*" (*p*).

A clause in the Articles protecting directors from liability in case of negligence will not, however, in the future be valid (*q*).

If directors act **within their powers** in the **bonâ fide** exercise of their discretion, they are not liable for mere errors of judgment, and the burden of proof lies on those who seek to charge them with bad faith.

Re New Mashonaland Co., [1892] 3 Ch. 577.

The directors agreed to lend £1250 to G., on his giving security. Cheques were paid to G. at once, but he never gave security:—**Held,** this is a doubtful case, but the burden of proof lies on the plaintiffs to prove fraud, and they have not done so. The directors are not liable, as they have exercised their judgment and are not liable for mere errors of judgment.

A director is not liable if he can show that he acted without knowledge of the facts which made his act illegal, provided he was not guilty of negligence (*r*). And in any case if he has acted honestly and reasonably and ought fairly to be excused, having regard to all the circumstances of the case, **the court can relieve him from liability** (*s*), even if his acts have been **ultra vires** (*t*).

A director who habitually abstains from board meet-

(*p*) See also *City of London Insurance Co.*, 41 T. L. R. 521.
(*q*) Companies Act, s. 152.
(*r*) *Dovey* v. *Cory*, [1901] A. C. 477
(*s*) Companies Act, s. 372.
(*t*) *Re Claridge's Patent Asphalte Co.*, [1921] 1 Ch. 543.

ings may become liable for the acts of his co-directors. But he is not bound to attend all board meetings.

Re Denham & Co. (1883), 25 Ch. D. 752.

All the powers of management were vested in D. C., one of the directors, did not attend the board meetings as a rule. Dividends were paid for four years out of capital. C. himself on one occasion moved a resolution for a dividend at fifteen per cent., but he had no reason to suspect any misconduct:—**Held,** C. was not liable.

A director who signs cheques makes himself liable if the cheque ought not to have been paid, unless he takes reasonable care to satisfy himself of the purpose for which and the authority under which the cheques have been signed (*u*).

One method by which a director may be made liable is by a "misfeasance" summons.

This is an application to the court by summons in the winding up, made by the liquidator or any creditor or contributory under sect. 276 of the Companies Act (*v*).

If one of several directors has been made to pay for misfeasance, he is entitled to contribution from the others.

Ashurst v. Mason (1875), L. R. 20 Eq. 225.

B., a director, held 250 shares with nothing paid. He resigned. His shares were, by a resolution of the directors, transferred to A., one of the directors, in trust for the company. This, of course, was illegal. The company was wound up, and A. had to pay in full:—**Held,** all the directors are liable to contribute their shares of this loss (*w*).

(*u*) *Joint Stock Discount Co.* v. *Brown*, L. R. 8 Eq. 381, at p. 404.

(*v*) A summons for directions must now be taken out as in an action, and the summons is usually heard with witnesses. [1921] W. N. 356; [1922] W. N. 294.

(*w*) This case was followed and explained in *Jackson* v. *Dickinson*, [1908] 1 Ch. 952.

The same rule applies to his liability under the section 37 of the Companies Act, and even though some of the directors are dead (*x*); but not if he has been guilty of fraud and the others have not (*y*).

If shareholders holding at least one-tenth of the issued shares of a company think the conduct of the directors requires investigation, they may apply to the Board of Trade to appoint inspectors to investigate the affairs of the Company (*z*).

Directors may also become liable for penalties if they do not comply with certain of the provisions of the Companies Act, which include

(1) Keeping a register of members (ss. 95, 365, penalty £5 per day).

(2) Making an annual list and summary (ss. 108, 110, penalty £5 per day).

(3) Sending to the registrar notice of conversion of shares into stock or of consolidation or division of shares (s. 51, penalty £5 per day).

(4) Calling a general meeting every year within the proper time (s. 112, penalty £50).

(5) (*a*) Sending in a proper report before the statutory meeting (ss. 113, 171, penalty £50).

(6) Sending to the registrar copies of special and extraordinary resolutions (s. 118, penalty £2 per day).

(7) Keeping a register of directors and notifying changes in the board (s. 144, penalty £5 per day).

(*x*) *Shepheard* v. *Bray*, [1906] 2 Ch. 235; but see S. C., [1907] 2 Ch. 571.
(*y*) Companies Act, s. 37 (3).
(*z*) *Ibid.*, s. 135.
(*a*) This does not apply to a private company.

(8) Allotments of shares not to be made until minimum subscription subscribed, etc. (ss. 39, 41, penalty compensation to the company and the allottee).

(9) Sending in a proper return of allotments (s. 42, penalty £50 per day).

(10) Stating in every balance sheet the amount paid by way of underwriting commission until written off (s. 44, penalty £5 per day).

(11) Having certificates ready for delivery (s. 68, penalty £5 per day).

(12) Keeping registers of mortgages and charges and allowing inspection (ss. 79, 88 (fine £50), 73 and 89 (fine £5 and £2 per day).

(13) **On winding up.**—Submitting a statement of affairs (s. 181, penalty £10 per day).

It is usually the duty of the secretary of the company to make himself acquainted with all the details of the Companies Act, and to see that the directors comply with its requirements.

CHAPTER XV.

MEETINGS AND RESOLUTIONS.

SECTION 1.

Meetings.

USUALLY two persons at least are necessary to constitute a meeting.

But where all the shares of a particular class are held by one person, such person alone may do what a meeting of shareholders of that class could do under the articles (*a*).

Meetings of shareholders are of three kinds:

(1) **Statutory meeting.**—A company must hold a general meeting within not less than one month and not more than three months from the date at which it is entitled to commence business (*b*). This meeting is called the **statutory meeting.** A report must be sent to all the shareholders seven days before this meeting, stating:

(a) the number of shares allotted, how much has been paid up and the consideration for allotment;

(b) the cash received by the company for these shares;

(c) an abstract of the receipts and payments of the company, and an estimate of the preliminary expenses;

(d) names, etc., of directors, auditors, manager and secretary;

(e) if any contract is to be submitted to the meeting for

(*a*) *East* v. *Bennett Brothers, Ld.*, [1911] 1 Ch. 163.
(*b*) Companies Act, s. 113.

modification, then particulars of the contract and the proposed modifications.

A list of members must be produced at the meeting.

This ensures that, within a short time from the commencement of a company, all the shareholders shall have a chance of ascertaining the exact position of the company. A private company need not hold a statutory meeting (*c*).

The company cannot before the statutory meeting alter the terms of any contract referred to in the prospectus except subject to the approval of the statutory meeting (*d*).

The notice convening the statutory meeting should state that it is intended to be the statutory meeting (*e*).

(2) **Ordinary meeting.**—The Articles generally provide that there shall be an **annual general meeting,** to be held on a certain date. This is an ordinary meeting. There must be at least one general meeting every calendar year, not more than 15 months after the previous meeting (*f*).

(3) **Extraordinary meeting.**—If there is some business which must or ought to be transacted before the next ordinary meeting, the directors may call an extraordinary meeting.

The holders of not less than one-tenth of the paid-up capital of the company carrying a right of voting,

(*c*) Companies Act, s. 113 (10).
(*d*) Companies Act, s. 36.
(*e*) *Gardner* v. *Iredale*, [1912] 1 Ch. 700.
(*f*) Companies Act, s. 112, penalty £50; and see *Smedley* v. *Registrar of Companies*, [1919] 1 K. B. 97.

may at any time compel the directors to call an extraordinary meeting (*g*).

The Articles may extend this power (*e.g.*, by allowing the holders of one-twentieth of the paid-up capital to requisition a meeting), but they cannot restrict it.

Such a requisition must be signed by the requisitionists, and in case of joint holders of shares all the joint holders must sign (*h*). If the directors neglect for 21 days to call the meeting, any of the requisitionists holding more than half the voting power of the requisitionists may call it themselves.

All these meetings are general meetings, and similar business may be transacted at all of them.

Every member is entitled to notice of a general meeting.

Smyth v. Darley (1849), 2 H. L. Cas. 789.

On an election of a treasurer for Dublin by the board of magistrates, notice was not sent to one of the board:—**Held,** the board were a corporate body, and the election was void.

But the Articles nearly always modify this rule, and provide that notices may be sent by post, and need not be sent to members who have no registered address in the United Kingdom, etc. See Articles 58 and 59 on p. 38.

If special business is to be transacted, the notice must specify its nature.

(*g*) Companies Act, s. 114, which also provides for the manner in which the meeting shall be held.

(*h*) *Patentwood Keg Syndicate* v. *Pearse*, [1906] W. N. 164.

Tiessen v. Henderson, [1899] 1 Ch. 861.

A notice convening extraordinary general meetings to consider two alternative schemes of reconstruction of the company did not disclose that the directors were strongly interested as underwriters, etc., in one of the schemes:—**Held,** the notice was bad (*i*).

But notices are not construed very strictly.

Young v. South African Syndicate, [1896] 2 Ch. 268.

The notice of a meeting stated that the object was to adopt new regulations instead of Table A, but did not set out the contents of the new regulations:—**Held,** this notice was good (*k*).

But a notice must be sufficient to show the members substantially what is proposed to be done, *e.g.* a notice of a resolution to increase the capital should specify the amount of the proposed increase (*MacConnell* v. *E. Prill & Co., Ltd.*, [1916] 2 Ch. 57).

A meeting once properly convened cannot be postponed by the directors (*l*).

Quorum.

The quorum for meetings of shareholders is generally fixed by the Articles. Table A (clause 45) fixes "three members personally present."

If Table A does not apply, and the Articles are silent, two members at least must be present (*m*).

Sometimes one member may be a quorum (*re Fireproof Doors, Ltd.*, [1916] 2 Ch. 142).

(*i*) And see *Normandy* v. *Ind Coope*, [1908] 1 Ch. 84, and *Baillie* v. *Oriental Co.*, [1915] 1 Ch. 503.

(*k*) And see *Betts & Co., Limited* v. *Macnaghten*, [1910] 1 Ch. 430 (a notice that a certain resolution would be passed "with such amendments as shall be determined on at the meeting" was held good).

(*l*) *Smith* v. *Paringa Mines*, [1906] 2 Ch. 193.

(*m*) Except where all the shares of the class are held by one person. *East* v. *Bennett Brothers, Ld.*, [1911] 1 Ch. 163.

A representative appointed by a company (see p. 225) is a member "personally present," and may be counted in a *quorum* accordingly (*Kelantan Coco Nut Estates, Ld.*, [1920] W. N. 274).

Chairman.

The **chairman** is often appointed by the Articles; if not, each meeting elects its chairman.

If the chairman prematurely closes the meeting, another chairman may be elected.

National Dwellings Society v. Sykes, [1894] 3 Ch. 159.

General meeting called to pass the accounts and re-elect directors. The chairman proposed "that the accounts be passed." A shareholder moved an amendment that a committee of inquiry be appointed. The chairman refused to take the amendment. He put the original motion, which was lost, and then dissolved the meeting at once. The shareholders then appointed a new chairman and appointed a committee of inquiry:—**Held,** these appointments were good.

But the chairman has a discretion, and every shareholder is not entitled to talk as much as he likes.

Wall v. London Assets Corporation (1898), 14 T. L. R. 496

After a long discussion, several members still wanted to speak, the chairman moved that "the question be now put," and the resolution was passed:—**Held,** the resolution was properly passed.

Votes.—Each shareholder has one vote, either on a show of hands or on a poll. But the Articles usually modify this rule, and make the voting power depend on the number of shares held.

The person who appears on the register as the holder of a share is the only person entitled to vote in respect of it (*m*).

(*m*) *Wise* v. *Lansdell*, [1921] 1 Ch. 420.

But he may be ordered by the court to vote in the manner indicated by some other person, e.g., by a mortgagor of shares (*mm*).

The method of voting is as follows: The chairman first takes a show of hands. In this, each member present counts for one only, even if he holds proxies (*Ernest* v. *Loma Co.*, [1897] 1 Ch. 1). In case of an ordinary resolution, the number of members specified in the Articles may **demand a poll**; in case of an extraordinary or special resolution, a poll may be demanded by

(1) The number of members entitled to vote specified in the Articles, but not exceeding five;

(2) If there is no provision in the Articles, any three such members, or any member or members holding fifteen per cent. of the paid-up capital (*n*).

The chairman then fixes the time and place for taking the poll. He may declare that it shall be taken then and there, unless the Articles provide otherwise. But he must not declare that it shall be taken in any way inconsistent with the regulations, *e.g.*, by voting papers (*McMillan* v. *Le Roi Mining Co.*, [1906] 1 Ch. 331).

When the poll is taken, each person voting signs a paper "for" or "against" the resolution, and proxies are counted.

A **proxy** is a writing (stamped 1*d.*) authorising a person to vote for a shareholder at a certain meeting; or it may authorise him to vote at a series of meetings. (If so, it must be stamped 10*s.*) (*o*)

(*mm*) *Puddephatt* v. *Leith*, [1916] 1 Ch. 200.
(*n*) Companies Act, s. 117 (4).
(*o*) *Isaacs* v. *Chapman*, [1916] W. N. 28; 32 T. L. R. 237.

There is no power to vote by proxy unless it is expressly provided for by the Articles.

The Articles usually provide that proxy papers shall be deposited at the office before the meeting; if not, the person voting is not bound to prove at the meeting his authority to vote, and his vote ought to be accepted, even if he cannot produce the proxy paper at the time.

Re English, Scottish and Australian Bank, [1893] 3 Ch. 385.

The bank had its principal business in Australia. A reconstruction scheme was proposed. The judge ordered that proxies from Australian shareholders should be notified by telegraph :— **Held,** the proxies were good, though they could not be produced at the meeting.

If a proxy is given for a particular meeting, the date of the meeting may be filled in afterwards (*p*).

The cost of obtaining the signature of proxy papers may be paid out of the funds of the company (*q*).

If a company is a member of another company, it may appoint a representative to vote (*r*).

The appointment of the representative may be proved by producing a copy of the resolution appointing him (*s*).

A corporation which is a shareholder is usually required to appoint its proxies under seal. But this is not required if the corporation has not got a seal (*s*).

During war the voting rights of shareholders, who are alien enemies, are suspended (*t*).

Adjournment.—As a general rule, an adjourned meeting is treated as a continuation of the original meeting (*u*); but any resolution passed at an adjourned

(*p*) *Sadgrove* v. *Bryden*, [1907] 1 Ch. 318.
(*q*) *Peel* v. *London & North-Western Railway Co.*, [1907] 1 Ch. 5.
(*r*) Companies Act, s. 116.
(*s*) *Colonial Gold Reef, Ld.* v. *Free State Rand, Ld.*, [1914] 1 Ch. 382.
(*t*) *Robson* v. *Premier Oil Co.*, [1915] 2 Ch. 124.
(*u*) *Spencer* v. *Kennedy*, [1926] Ch. 125.

C.L.

MIDDLE TEMPLE LIBRARY

meeting must now be treated as having been passed on the date on which it was in fact passed (*v*).

SECTION 2.
Resolutions.

Resolutions are of three kinds:

1. **Ordinary.**—That is, a resolution passed by a majority of persons present at a general meeting. The resolution is passed in the ordinary way and entered in the minute book by the chairman. The chairman's entry of an ordinary resolution is evidence that it has been properly passed (*w*).

2. **Extraordinary resolutions.**—An extraordinary resolution is a resolution passed by a three-quarters majority of the members who are entitled to vote and do vote at a general meeting, of which notice specifying the intention to propose the resolution **"as an extraordinary resolution"** has been given (*x*). It may be used to wind up a company voluntarily on the ground that it cannot continue its business by reason of its liabilities, and that it is advisable to wind it up (*y*). The Articles usually provide that directors may be removed by extraordinary resolution.

3. **Special resolutions.**—These are necessary for the following purposes among others—

(a) to alter the Articles of the company;

(b) to alter the Memorandum with leave of the court;

(*v*) Companies Act, s. 119.
(*w*) *Ibid.*, s. 120.
(*x*) Companies Act, s. 117. *MacConnell* v. *E. Prill & Co., Ld.*, [1916] 2 Ch. 57.
(*y*) Companies Act, s. 225.

(c) to change the name of the company with the consent of the Board of Trade;

(d) to reduce the capital with leave of the Court;

A special resolution must be passed by **a three-quarters majority** of those entitled to vote and voting at the meeting.

Notice of meeting to pass special resolution.—Not less than **twenty-one days'** notice must be given, specifying the intention to propose the resolution **"as a special resolution."**

The declaration by the chairman that an extraordinary or special resolution has been carried is **"conclusive,"** unless a poll is demanded (*z*).

Re Hadleigh Castle Gold Mines, [1900] 2 Ch. 419.

A meeting was held to pass an extraordinary resolution (see below) to wind up the company. The chairman declared that it was carried on a show of hands. No poll was demanded. A shareholder afterwards contended that it had not been passed by a three-quarters majority:—**Held,** the chairman's declaration is conclusive, and the court cannot go into the question.

But the chairman's declaration will not make a resolution good if the declaration itself shows that it was bad.

Re Caratal New Mines, Limited, [1902] 2 Ch. 498.

A special resolution for reconstruction was proposed. The chairman put the question. Then he said, "Those in favour, 6; against, 23; but there are 200 voting by proxy, and I declare the resolution carried":—**Held, proxies cannot be counted on a show of hands,** therefore the declaration was, on the face of it, illegal, and the resolution was void.

If all the members entitled to vote at a meeting agree, a special resolution may be passed at a meeting

(*z*) Companies Act, s. 117 (3).

of which less than twenty-one days' notice has been given (*a*).

If all the members of the company are present and vote for the resolution, it will be valid, in spite of informalities, in the case of an ordinary (*b*) or an extraordinary (*c*) resolution.

A copy of every special resolution and of every extraordinary resolution must be sent to the Registrar within fifteen days (*d*).

Amendments.—When a resolution has been moved, an amendment may be put, if it is within the business covered by the notice convening the meeting, but not otherwise (*e*).

SECTION 3.

Minutes.

A company must cause minutes of all meetings to be kept in minute books. Any minute signed by the chairman is *primâ facie* evidence of the proceedings. Where minutes have been properly made the meeting is deemed to have been duly held, unless the contrary is proved (*f*). The minute books of general meetings must be kept at the registered office, and must be open to the inspection of members free. Members may also require copies of the minutes at a charge of not more than 6*d.* per 100 words (*g*).

(*a*) Companies Act, s. 117 (2).
(*b*) *Express Engineering Works*, [1920] 1 Ch. 466.
(*c*) *Oxted Motor Co.*, [1921] 3 K. B. 32.
(*d*) Companies Act, s. 118.
(*e*) *Teede & Bishop, Ld.*, [1901] W. N. 52.
(*f*) Companies Act, s. 120.
(*g*) *Ibid.*, s. 121.

CHAPTER XVI.

ACCOUNTS AND AUDITORS.

SECTION 1.

Accounts.

BEFORE 1929 there was no express provision in the Companies Acts requiring a company to keep accounts. Now, by sects. 122 and 123, every company must keep proper books of account with respect to—

(a) all receipts and expenses, and the matters to which they relate;

(b) sales and purchases of goods;

(c) assets and liabilities.

The account books must be kept at the registered office or some other place appointed by the directors, and must be open to inspection by the directors. The directors must in every year lay before the company in general meeting a **profit and loss account** and a **balance sheet**. A report of the directors must be attached to the balance sheet as to the state of the company's affairs, the amount recommended to be paid by way of dividend, and the amounts to be carried to reserve.

The balance sheet must contain a summary of—

(1) the authorised capital;

(2) the issued capital;

(3) the liabilities;
(4) the assets,

with particulars showing the nature of the liabilities and assets, and showing how the values of the fixed assets have been arrived at.

The balance sheet must also show separately—

(1) the preliminary expenses and expenses of issues of shares (until written off);
(2) the amount of the goodwill, patents and trade-marks (if ascertainable);
(3) all the debts of the company which are secured on any of its assets (*a*);
(4) commissions and discounts on shares and debentures (until written off) (*b*);
(5) loans for the purchase of shares by employees (*c*);
(6) the number and amount of any redeemable preference shares, and the date on which they can be redeemed (*d*);
(7) particulars as to debentures which have been redeemed, but are available for re-issue (*e*);
(8) shares in subsidiary companies (*f*);
(9) particulars as to the profits and losses of subsidiary companies (*g*);
(10) the amounts of loans to directors or officers (*h*);
(11) the total amount paid to directors for remuneration (*h*).

The balance sheet must be signed by two directors (or one if there is only one). The auditor's report

(*a*) Companies Act, s. 124.
(*b*) *Ibid.*, s. 44 (1).
(*c*) *Ibid.*, s. 45 (2).
(*d*) *Ibid.*, s. 46 (2).
(*e*) Sect. 75 (3).
(*f*) Sect. 125.
(*g*) Sect. 126.
(*h*) Sect. 128.

must be attached to the balance sheet and read to the company in general meeting (*i*).

The accounts should be kept in a manner which prudent business people would adopt (*k*). Copies of the accounts must be sent to the shareholders, except in the case of private companies (*l*).

The accounts are presented and passed at the annual general meeting.

On the next four pages will be found a form of balance sheet and profit and loss account presented by the directors of a company to the shareholders.

The following points should be specially noted:

In order to show what profit has been made in the year, the amount of capital subscribed must be shown. See item (a). If it can be shown that the assets amount to more than this sum, the balance is profit. Besides the subscribed capital, any moneys paid to reserve funds, etc., in previous years must be accounted for (see item (b)), and debts owed by the company must also be deducted from the assets. See item (c).

On the other side is set out the value of the assets. Notice that deduction is made, in the case of the leaseholds and plant, for depreciation. See item (d). As the assets exceed the liabilities, the balance is written under the latter head. See item (e). So much for the capital account.

The same profit is arrived at in the **profit and loss** account (p. 234).

The total amount of the trading profit for the year is stated. See item (f). From this are deducted directors' fees, etc. (see item (g)), leaving a balance (item (h)). Out of this are paid dividends on preference shares, interest on debentures, and amounts put by as reserve for the year (items (i)), and the balance (j) is profit which may be divided among the shareholders by declaring a dividend of (say) 5 per cent. on the ordinary shares, leaving a balance to be carried over to the next year.

(*i*) Sect. 129.
(*k*) *Hinds* v. *Buenos Ayres Co.*, [1906] 2 Ch. 654.
(*l*) Companies Act, s. 130.

BLANK COMPANY,
BALANCE SHEET,

LIABILITIES.

	£	s.	d.	£	s.	d.
To Share Capital authorised—						
150,000 Cumulative 5½ per cent. preference shares of £1 each	150,000	0	0			
Less 8,000 cancelled in accordance with special resolution passed November 5th, 1909, confirmed November 22nd, 1909 ...	8,000	0	0			
				142,000	0	0
50,000 Ordinary shares of £1	50,000	0	0			
Less 8,000 cancelled in accordance with special resolution passed and confirmed as above	8,000	0	0			
				42,000	0	0
				£184,000	0	0
Issued and subscribed (a)—						
125,000 Cumulative 5½ per cent. preference shares of £1 each	125,000	0	0			
Less 8,000 cancelled as above	8,000	0	0			
				117,000	0	0
50,000 Ordinary shares of £1 each	50,000	0	0			
Less 8,000 cancelled as above	8,000	0	0			
				42,000	0	0
				159,000	0	0
To 6 per cent. 1st Mortgage Debenture Stock				20,000	0	0
,, Sundry Trade and other Creditors (c)				48,486	16	0
,, Bills Payable				19,973	15	4
,, Reserve Account (b)				8,500	0	0
,, Bad Debt Reserve Account (b)				1,204	1	8
,, Building ,, ,, (b)				700	0	0
,, Insurance Reserve (b)				175	0	0
,, Exchange Reserve at Shanghai				71	3	4
,, Suspense Account for Dividend on Preference Shares (1st Oct. to 31st Dec., 1909)				1,608	15	0
,, Profit and Loss Account balance, as per Account below (e)				3,397	12	8
(NOTE.—Contingent Liability on Bills discounted £4,888 0 11)						
				£263,117	4	0

By sect. 129 the Auditor's report must be attached to the balance sheet.
See next page.

LIMITED.
31st December, 1909.

ASSETS.

	£	s.	d.	£	s.	d.
By Goodwill, Trade Marks, and Patents, as shown in the Company's Books				58,987	16	5
,, Freehold Property, at cost price	8,584	7	6			
,, Amount expended during year	13	13	2	8,598	0	8
,, Leasehold Property, at cost price, *less* Depreciation, as per last Balance Sheet ...	1,648	8	2			
Less Written off for Depreciation (d) ...	226	3	11	1,422	4	3
,, Fixed Plant and Machinery at Homerton, at cost price, *less* Depreciation, as per last Balance Sheet	2,324	6	4			
Amount expended during the year ...	389	8	3			
	2,713	14	7			
Less Written off for Depreciation (d) ...	581	1	7	2,132	13	0
,, Tools and Stores at Homerton, as valued by the Managing director				247	4	6
,, Fixtures, Fittings, Furniture, and Plant, at Queen Victoria Street, Upper Thames Street, and at Shops, as valued by the Directors	4,891	18	3			
Expended during the year	39	4	1			
	4,931	2	4			
Less Written off for Depreciation ...	360	4	8			
	4,570	17	8			
,, Fixtures at Montreal, New York, and Shanghai, at cost price	888	15	8			
,, Fixtures and Plant at Glasgow, at cost price	104	5	1			
,, Fixtures at Homerton, at cost price ...	326	6	2	5,890	4	7
,, Travellers and Warehouse Plant, as valued by the Managing Director				577	14	10
,, Silver Mounters' Plant, at cost price				147	3	8
,, Investments at middle quoted prices, December 31st, 1909				580	11	3
,, Bills Receivable				8,117	2	4
,, Sundry Debtors	80,969	2	2			
Less Reserve for Discounts ...	1,344	18	0	79,624	4	2
,, Amount due by H.M. Customs				8	2	4
,, Advance on Leases				900	0	0
,, Suspense Account of amount paid in anticipation at shops, Shanghai and New York				60	19	9
,, Stock as per Inventories at London and Glasgow (certified by Managing Directors) and at Shanghai, Montreal, and New York				93,196	17	2
,, Goods in Transit for Shanghai				105	4	4
,, Cash. At Bankers				2,125	13	11
In hand				395	6	10
				£263,117	4	0

PROFIT AND LOSS ACCOUNT,

	£	s.	d.	£	s.	d.
To Directors' Fees and Managing Directors' Remuneration (g)	2,500	0	0			
,, Auditors' Fees	210	0	0			
,, Pensions	130	18	0			
				2,840	18	0
,, Interest				7	17	1
,, Balance carried down (h)				9,974	8	8
				£12,823	3	9

	£	s.	d.
To Dividend at 5½ per cent. per annum on Preference Shares (i)	6,765	0	0
,, Debenture Interest (i)	306	3	5
,, Amount transferred to Reserve (i)	1,000	0	0
,, Balance carried to Balance Sheet (j)	3,397	12	8
	£11,468	16	1

Auditors'

(k) *We report to the Shareholders that we have obtained all the information above Balance Sheet and Profit and Loss Account with the Books and Vouchers and that in our opinion the Balance Sheet is properly drawn up so as to exhibit to the best of our information and the explanations given to us, and as shown*

LONDON, 14*th March*, 1910.

Year ended 31st December, 1909.

	£	s.	d.
By Profit on Trading after providing for Bad and Doubtful Debts and Depreciation of Leases, Plant, and Machinery (f)	12,784	2	0
NOTE—The sum of £16,000 written off an exceptional Bad Debt has been provided by the Voluntary Surrender of 8,000 Preference and 8,000 Ordinary shares by the Chairman and Managing Directors of the Company			
,, Transfer Fees	8	19	6
,, Profit on Sale of Investments, less loss on purchase ...	30	2	3
	£12,823	3	9

	£	s.	d.
By Balance brought down	9,974	8	8
,, ,, ,, from last year ... £4,494 7 5			
Less Dividend for the year 1908 on the Ordinary Shares at the rate of 6% ... 3,000 0 0	1,494	7	5
	£11,468	16	1

Directors.

Report.

and explanations we have required, that we have examined and compared the in London and the audited statement from Montreal, New York, and Shanghai, a true and correct view of the Company's affairs at 31st December last, according by the Books of the Company.

Auditors.

SECTION 2.

Auditors.

The Articles usually provide for the appointment of auditors and the auditing of the accounts of the company. But apart from any such provision, the Companies Act provides as follows:

An auditor is to be appointed at the annual general meeting of the company in each year: if not, the Board of Trade may appoint on the application of any member (*m*).

Notice of intention to nominate a person as auditor must be given fourteen days before the general meeting (*m*).

The first auditors can be appointed by the directors, but subject to the power of the company in general meeting to remove them (*n*).

The following persons cannot be appointed auditors—

(a) a director or other officer of the company;

(b) a partner of or a person employed by an officer of the company (except in case of a private company);

(c) a corporation (*o*).

The auditors are entitled to have access to the books and papers of the company, and may require all necessary information and explanations from the officers of the company.

But the court will not always order the company to produce its books to the auditors, *e.g.*, if there is a dispute between the company

(*m*) Sect. 132.
(*n*) Sect. 132 (4).
(*o*) Sect. 133.

and the auditors, and it is not proved that the company intends to continue their appointment as auditors (*p*).

The auditors have a right to attend meetings of the company at which the accounts or their reports are to be considered (*q*).

Duties of Auditors (see notes (*t*) pp. 238, etc.).—The auditors' duties are—

(1) To **make a report** stating whether they have obtained all the information and explanations they have required, and whether the balance sheet is properly drawn up (*r*). The auditors' report must be attached to the balance sheet and must be **read before the company in general meeting.** Members are entitled to inspect the report and have copies (*s*).

For this purpose the auditor must—

(a) see that the books show the true financial position of the company;

(b) report all material points to the shareholders, and

(c) if the balance sheet does not show the amount of loans to the officers or the remuneration of the directors, the auditors must include these in their report (sect. 128 (4)).

Newton v. Birmingham Small Arms Co., Ltd., [1906] 2 Ch. 378.

The directors resolved to create a secret reserve fund, the existence and purposes of which were not to be disclosed by the auditors to the company:—**Held,** the resolution was bad, as the auditors would be bound to disclose the facts.

(2) To **make himself acquainted with his duties**

(*p*) *Cuff* v. *London & County Land Co.*, [1912] 1 Ch. 440.
(*q*) Companies Act, s. 134 (3).
(*r*) Companies Act, s. 134, and see item (k) on p. 130.
(*s*) S. 129.

under the company's Articles and under the Companies Act (*u*).

But he is not bound to be a legal expert (*u*).

(3) He must be honest and must exercise reasonable care; otherwise he may be sued for damages.

It is not his duty to give advice, and he has nothing to do with the way in which the business is carried on (*x*); nor is he bound to be a detective, but

(*t*) *Notes of Cases on the Duty of Auditors* (*a*).

(*u*) *Republic of Bolivia Exploration Syndicate, Ld.*, [1914] 1 Ch. 139. The company's Memorandum provided for payment of underwriting commissions. Their Articles incorporated Table A (1906), which does not provide for payment of such commissions and also does not expressly permit a director to contract with the company. The company paid certain sums for underwriting commission and also paid profit costs to one of its directors who was a solicitor. The auditor passed these items in the balance sheets, relying on the power given in the Memorandum, and knowing that the solicitor was not a director when the company was formed, and their legality had been discussed at a meeting of shareholders, who had subsequently approved the balance sheet.

Held, "Auditors of a limited company are bound to know and make themselves acquainted with their duties under the Articles of the company whose accounts they are appointed to audit, and under the Companies Acts for the time being in force; and when it is shown that audited balance sheets do not show the true financial condition of the company and that damage has resulted, the onus is on the auditors to show that this is not the result of any breach of duty on their part." In the special circumstances of this case the auditor was not liable; but the court, not being entirely satisfied with the way the audit was conducted as regards the payments to the director, dismissed the summons without costs.

(*x*) *Re London General Bank* (*No.* 2), [1895] 2 Ch. 673. The greater part of the capital of the company was advanced on loan to the Liberator and other Balfour companies upon securities which were insufficient and difficult to realise For several years the auditors pointed out to the directors the unsatisfactory nature of these securities; but the auditors' report to the members on the balance sheet only stated that "the value of the assets as shown on

(*a*) These notes are intended for the use of accountants and others specially interested in this question.

is justified in believing tried servants of the company and in assuming that they are honest, provided he takes reasonable care (*y*). On the other hand, **if there is anything calculated to excite suspicion he should probe it to the bottom** (*y*), and he must not confine himself merely to the task of verifying the arithmetical accuracy of the balance sheet, but should ascertain by comparison with the books of the company that it was properly drawn up so as to show the correct financial position (*z*).

The auditor should see that the moneys and securities of the company are actually in the posses-

the balance sheet is dependent on realisation." On the faith of this balance sheet dividends were declared, which were really paid out of capital:—Held—(1) It was nothing to the auditor whether the business of the company was being conducted prudently or imprudently, profitably or unprofitably, . . . provided he discharged his own duty to the shareholders. (2) His duty was to ascertain the true financial position of the company and to report to the shareholders. The auditors had failed in this, and were liable.

(*y*) *Re Kingston Cotton Mill Co.* (*No.* 2), [1896] 2 Ch. 279. The value of the company's stock-in-trade was grossly overstated for several years in the balance sheets, and the directors were thus enabled to pay dividends out of capital. The auditors accepted the certificate of the manager (a business man of high repute) as to the value of the stock. The auditors did not examine the books; if they had done so, and had added to the value stated in the previous year the amount spent on stock and deducted the amount received from sales, they would have seen that the valuation required explanation:—Held, the auditors were not liable: it was no part of their duty to take stock.

(*z*) *Leeds Estate Co.* v. *Shepherd* (1887), 36 Ch. D. 787. The Articles provide that the Directors should receive remuneration only if the dividends exceeded 5 per cent. The manager prepared a delusive balance sheet, which enabled the directors to declare dividends of over 5 per cent. and pay themselves their remuneration. The auditor did not look at the Articles or at the books of the company, but accepted the statement of the manager, and certified the accounts "to be a true copy of those shown in the books of the company." The dividends were in fact paid out of capital:—Held, the auditor was liable.

sion of the company, or have been deposited for safe custody with a bank or in other proper custody.

An auditor has been held not to be justified in accepting a certificate of the company's brokers that they held certain securities on behalf of the company without production of the securities (*a*).

An auditor, if formally appointed by the Articles or under section 132 of the Companies Act, is an "officer" of the company, and liable to be proceeded against for misfeasance under section 276.

But an auditor informally appointed is not such an officer.

Re Western Counties Bakeries Co., [1897] 1 Ch. 617.

The Articles provided for the appointment of auditors in general meeting. P. and R. were employed as auditors on two occasions, but were never formally appointed:—**Held**, they could not be made liable as "officers" of the company.

Provisions in the articles that the auditors and other officers of the company are only to be liable in case of their own wilful default would protect the auditors under the Act of 1908, unless the auditors knew that they were neglecting their duties (*b*), but now any such provisions are void (*c*). The court may, however, relieve the auditors (whether they are officers of the company or not) if they have acted honestly and

(*a*) *City Equitable Fire Insurance Co.*, [1925] Ch. 407. In this case the true position of the company was concealed by the chairman from the shareholders and the other directors. The steps taken by the auditors, and the extent to which those steps fell short of the proper measure of care to be expected from the auditors, were fully discussed by ROMER, J., at pp. 478 to 499, and this part of the judgment should be carefully studied by any student interested in the position of auditors.

(*b*) *City Equitable Fire Insurance Co.*, [1925] Ch. 407.

(*c*) Companies Act, s. 152.

reasonably, and ought, in all the circumstances, fairly to be excused (*d*).

Remuneration.—The remuneration of an auditor is fixed by the general meeting which appoints him, and is paid by the company (*e*).

Auditors are agents for the shareholders: but the shareholders are not necessarily bound by notice of everything of which notice is given to the auditors (*f*).

(*d*) Companies Act, s. 372.
(*e*) Or by the directors or Board of Trade if they made the appointment, s. 132 (6).
(*f*) *Spackman* v. *Evans*, L. R. 3 H. L. 196, 235.

CHAPTER XVII.

PRIVATE COMPANIES.

"A private company" is defined by the Companies Act to mean a company which by its articles

(a) restricts the right to transfer its shares;

(b) limits the number of its members (exclusive of persons who are or have been in the employment of the company) to fifty; and

(c) prohibits any invitation to the public to subscribe for any shares or debentures of the company (*a*).

Several joint holders of a share are for the purposes of this definition treated as one member (*b*).

The Act does not specify in what manner the right to transfer shares must be restricted. It is probably sufficient if the right is so restricted that the directors can prevent the number of members from being increased beyond fifty.

If a private company alters its articles so that they do not contain the necessary provisions, the company ceases to be a private company, and must within fourteen days deliver to the Registrar a prospectus or statement in lieu of prospectus in the form set out in the 3rd Schedule to the Act. There are penalties in case of default (*c*).

If a private company fails to comply with any of these provisions, it ceases to be entitled to the

(*a*) Companies Act, s. 26.
(*b*) *Ibid.*, s. 26 (2).
(*c*) S. 27.

privileges of a private company. But the court may grant relief, if the default was due to accident, inadvertence or other sufficient cause (*d*).

Usually all the shares of a private company are held by a few persons, frequently members of the same family.

It is often convenient for a person or partnership to turn their business into a private company. This is done by forming a private company and selling the business to the company. The consideration is usually the allotment of shares to the sellers of the business, credited as fully paid.

The result is to limit the liability of the former owner or members in case of loss and to make a division of profits and interests in the business more easy to accomplish.

Legally, the position of a private company is in most respects the same as that of a public company (*e*), and even if one member holds practically all the shares, the company is a distinct "being" or "person" (see *Salomon* v. *Salomon & Co., Limited*, ante, p. 6).

Thus the company is not bound by notice of matters which are in the knowledge of the one important member (see *The "Birnam Wood,"* [1907] P. 1).

It is sometimes difficult to say whether a company has issued **"an invitation to the public"** or not; but the test seems to be that the invitation must have been issued—

(1) by the company itself (*f*); and

(*d*) Companies Act, s. 27 (3).

(*e*) *E.g.* for purposes of apportionment of dividends. *Re White*, [1913] 1 Ch. 231.

(*f*) Thus in *Booth* v. *New Afrikander Co.*, [1903] 1 Ch. at p. 315, it was held that an offer by the liquidator of an old company, of shares in a new company, was not an offer to the public within s. 8 of the Act of 1900. And see *Burrows* v. *Matabele Gold Co.*, [1901] 2 Ch. 23.

(2) to any person who chose to apply for the shares, or to a considerable class of persons selected as being the most likely subscribers.

Sherwell v. Combined Incandescent Syndicate, Limited, [1907] W. N. 110.

The directors printed a thousand copies of a prospectus headed "Strictly private and confidential: not for publication," and some were distributed by the directors among their friends:—**Held,** this was *not* an invitation to the public.

South of England Natural Gas Co., Ld., [1911] 1 Ch. 573.

Prospectus headed "For private circulation only" but filed with the Registrar. 3000 copies sent out, but only to shareholders in certain gas companies:—**Held,** this *was* an invitation to the public.

Special provisions relating to private companies.

(1) **A private company may consist of two members only** (*g*).

(2) A private company must **send with the annual list and summary** required by sect. 108, **a certificate** signed by a director or the secretary that the company has **not issued any invitation to the public** to subscribe for shares or debentures, and, **if the number of members exceeds fifty, a certificate that the excess consists of employees or past employees** of the company (*h*).

(3) The annual summary need not include a balance sheet (*i*).

(4) The company need not hold a statutory meeting (*j*) (see p. 219).

(5) Directors need not deliver to the Registrar a

(*g*) Companies Act, s. 1.
(*h*) *Ibid.*, s. 111.
(*i*) *Ibid.*, s. 110 (3).
(*j*) *Ibid.*, s. 113 (10).

consent to act or sign the Memorandum or a contract for their qualification shares (*k*) (see p. 202).

(6) **A statement in lieu of a prospectus need not be issued** even though no prospectus is issued (*l*).

But a private company must issue a statement in prescribed form if it wishes to pay underwriting commission (*m*).

(7) Shares may be allotted before the minimum subscription is subscribed (*n*).

(8) A private company **may commence business immediately it is incorporated** notwithstanding that the minimum subscription has not been subscribed and the directors have not paid the proper proportion on their shares (*o*).

(9) The balance sheets need not be sent to the shareholders.

The **Articles of Association** of a private company usually contain special provisions (*p*), and for the purpose of obtaining the privileges of a private company should provide as follows:—

(1) **The transfer of shares should be restricted,** *e.g.* so that only members, or the sons or daughters, etc., of members, can become shareholders (*q*).

(2) The number of members (exclusive of employees and ex-employees) should be limited to 50.

(*k*) Companies Act, s. 140 (4). (*l*) *Ibid.*, s. 40.
(*m*) *Ibid.*, s. 43 (1) (c) (ii); and see the prescribed form, W. N., 11th July, 1908, p. 223.
(*n*) Companies Act, s. 39; and see p. 100, *ante*.
(*o*) *Ibid.*, s. 94 (7); and see p. 74, *ante*.
(*p*) See Palmer's Company Precedents, 13th edit., vol. i. pp. 910 *et seq.*
(*q*) *Attorney-General* v. *Jameson*, [1904] 2 I. R. 644.

(3) Invitations to the public to subscribe for shares or debentures should be prohibited.

(4) If it is intended to give some of the shares to employees, a provision is sometimes inserted that they must transfer their shares if they are dismissed. This, however, is not necessary since ex-employees are excluded from the limit of 50 members (*r*).

(5) The vendor or chief member is often made governing director for life, and other directors are exempted from the rule which makes directors retire by rotation, etc.

(6) Share warrants should not be authorised.

Sometimes the company adopts table A as its Articles with modifications. This is, however, most inconvenient in practice, and it is better to adopt a short form of Memorandum and Articles complete in themselves.

A "**Syndicate**" is the name usually given to a company composed of a few members formed for the purpose of exploring or investigating the value of some property and of selling it, if satisfactory, to a larger company.

Syndicates are usually limited companies, and may be either public or private.

(*r*) Companies Act, s. 26 (1) (b).

CHAPTER XVIII.

GUARANTEE COMPANIES.

A COMPANY limited by guarantee need not necessarily have any capital at all. Each member undertakes to contribute a certain sum if the company is wound up.

The Memorandum of Association therefore contains a declaration of this guarantee, but does not usually contain any statement as to the amount of capital. In other respects, the Memorandum and Articles are similar to those of a company limited by shares.

If the company is wound up, no contribution can be required from any member exceeding the amount undertaken to be contributed by him to the assets of the company (*a*).

Past members are liable to be put on the "B" list (*b*).

If the company has a capital divided into shares, the amount of the capital and the number of shares must be stated in the Memorandum (*c*).

This provision was first made by the Companies Act, 1900. Consequently in case of a company registered after the Act of 1900, the capital cannot be altered without a change of the Memorandum, which requires the leave of the court, but if registered before the Act, it may be able to change its capital by merely changing the Articles.

If there is no capital, persons dealing with the

(*a*) Companies Act, s. 157 (1) (e).
(*b*) *Premier Underwriting Co.*, [1913] 2 Ch. 29.
(*c*) Companies Act, s. 2 (4).

company have very little security, as there is no liability on the members until the company is wound up, and by that time most of the members may have retired.

If there is no capital divided into shares, no person who is not a member can participate in the profits of the company, if it was registered after the 1st January, 1901 (*d*).

If there is a share capital, it may be reduced in the same way as in the case of a company limited by shares (*e*).

On an allotment of shares the provisions of s. 42 of the Companies Act as to a return of allotments and delivery of contracts to the Registrar, must now be complied with.

If there is no share capital, sect. 114 enables persons holding not less than one-tenth of the voting rights to requisition a general meeting.

(*d*) Companies Act, s. 21 (1). (*e*) *Ibid.*, s. 55 (1).

CHAPTER XIX.

WINDING UP BY THE COURT.

If the members wish the company to come to an end, or if it becomes insolvent, or if for any other reason it becomes desirable that the company should cease to exist, it is wound up.

A company may be wound up in three ways:

(1) **Compulsory winding up by the court;**

(2) **Voluntary winding up;**

(3) **Winding up under the supervision of the court.**

Whichever way is selected, a liquidator or liquidators are appointed to administer the property of the company, and they must apply the assets of the company, first, in the payment of creditors in their proper order, and then in distributing the residue among the shareholders according to their rights.

A company cannot be made bankrupt.

Section 1.

When a company may be wound up by the court.

A company may be wound up by the court when (*a*)—

(1) the company has passed a special resolution (*b*) to wind up; or,

(*a*) Companies Act, s. 168. (*b*) See p. 226.

(2) default is made in filing the statutory report or holding the statutory meeting (*c*); or

(3) the company does not commence business within a year from its incorporation or suspends business for a year; or,

(4) the number of the members falls below seven (or in case of a private company below two); or

(5) the company is unable to pay its debts; or

(6) the court is of opinion that it is just and equitable, that it should be wound up.

As to (1).—A company may be wound up for any cause whatever if a sufficient number of members pass a special resolution that it shall be wound up.

As to (3).—The power of the court to wind up a company which has not carried on business for a year is discretionary, and will not be exercised unless there are indications that the company has no intention of continuing its business.

Re Capital Fire Insurance (1882), 21 Ch. D. 209.

A fire insurance company had commenced a considerable business in France within the year, and intended to commence in England so soon as sufficient capital should be subscribed. An order to wind up was refused.

A company will not be wound up because it has ceased to carry on one of several businesses, unless that business is the main object of the company.

Re Amalgamated Syndicate, [1897] 2 Ch. 600.

For facts, see p. 24.

(*c*) See page 219, *ante*.

A company which has amalgamated with another company cannot be wound up on the ground that it has ceased to carry on business as a separate company (*d*). The Registrar may strike the name of a defunct company off the register (*e*).

As to (4).—A company is not often wound up by the court on the ground that the members are less than seven, because the **court will not usually make an order to wind up where there are very few members,** but will leave the company to wind up voluntarily.

As to (5).—A company is deemed to be unable to pay its debts,—

(1) if a creditor to whom the company owes £50 or more has served on the company a demand for payment, and the debt has not been paid within three weeks;

(2) if an execution on a judgment remains unsatisfied; or

(3) if it is proved to the satisfaction of the court that the company cannot pay its debts (*f*).

The court must take into account contingent liabilities and assets of the company (*g*); but otherwise may be satisfied by any evidence that it deems to be sufficient.

Re Globe Steel Co. (1875), L. R. 20 Eq. 337.

The company accepted a bill of exchange in part payment for goods bought. No demand had been made or execution levied.

(*d*) *National Finance Co.* (1866), W. N. 243, 14 L. T. 749.
(*e*) Companies Act, s. 295.
(*f*) *Ibid.*, s. 169. (*g*) *Ibid.*, s. 169 (4).

The bill was dishonoured:—**Held,** this was sufficient proof of insolvency.

A company may be wound up even when its assets are valuable, if they are locked up in investments and the company is being carried on at a loss.

Re Factage Parisien, explained (1867), L. R. 2 Ch. App., at pp. 746, 747.

The company was carrying on its business at a loss, and was paying its debts by making new calls on the members:—**Held,** the company may be wound up. "If they are carrying on business at a manifest loss, and **it is totally impossible to make any profit,** it can scarcely be said that this court will consider it just and equitable that the company should be allowed to continue when people who have embarked property to a considerable amount in it do not wish it to go on. . . . It is quite distinct from saying that it is an insolvent company, or that it cannot pay its debts, because the persons managing it will take care to have all the debts paid by making calls to meet them."

This will only be done on clear proof that the company cannot possibly make a profit.

If the company might ultimately make a profit by a change of management, a winding up order will not be made (*h*).

As to (6).—Where there is a petition to the court to wind up a company on the ground that it is "just and equitable," the court is not confined to cases similar to those mentioned in sub-ss. (1) to (4) (*i*). The court will not, however, make the order unless there is some special reason for doing so. Thus, general charges of fraud are not usually sufficient (*j*).

(*h*) *Suburban Hotel Co.*, L. R. 2 Ch. 737.

(*i*) *Yenidje Tobacco Co.*, [1916] 2 Ch. 426; *Loch* v. *John Blackwood, Ld.*, [1924] A. C. 783.

(*j*) Fraud, if alleged, must be specifically proved, and it is not sufficient that it should appear in the statutory affidavit alone (*London & Hull Soap Works, Limited*, [1907] W. N. 254).

Re Medical Battery Co., [1894] 1 Ch. 444.

Serious charges were made against the manager Harness of defrauding the public. The company went into voluntary liquidation, but some creditors wanted to have it wound up by the court :—**Held,** fraud towards the outside world is no ground for compulsory winding up.

But where the whole object of the company was fraudulent, the company has been wound up.

Re T. E. Brinsmead & Sons, [1897] 1 Ch. 45, 406.

T. E. Brinsmead and two of his sons had been in the employ of the old firm of John Brinsmead & Sons. They started a company, and agreed to sell to this company the business and name of T. E. Brinsmead & Sons. They were restrained by an injunction from using the name Brinsmead on the ground of fraud. A petition for compulsory winding up was then presented : —**Held,** the company was initiated to carry out a fraud, and was hopelessly embarrassed by a lot of actions for fraud ; therefore it was just and equitable that it should be wound up.

A company may be wound up under this section for the purpose of defeating a reconstruction scheme which is prejudicial to the shareholders (*k*), or in case of a deadlock (*l*), or, in the case of a private company, for reasons which would justify a dissolution of partnership (*ll*).

SECTION 2.

Who may Petition.

Winding up by the court is commenced by a petition to the court. **Either a contributory or a creditor may petition** or both together ; for the order

(*k*) *Consolidated South Rand Mines, Limited,* [1909] 1 Ch. 491.
(*l*) *Yenidje Tobacco Co.,* [1916] 2 Ch. 426, and *American Pioneer Leather Co., Ld.,* [1918] 1 Ch. 556.
(*ll*) *Yenidje Tobacco Co.* (*supra*) ; *Loch* v. *John Blackwood, Ld.,* [1924] A. C. 783.

is made for the benefit of all (*m*), and the court may in either case have regard to the wishes of the creditors and contributories (*n*).

1. **Petition by contributory.**—A contributory cannot petition unless he has held his shares for at least six months during the eighteen months preceding the petition, except where—

(1) he is an original allottee, or

(2) the shares have devolved on him through the death of a former holder, or

(3) the number of the members has become less than seven (or two in case of a private company).

A fully paid shareholder can petition; so can a member whose calls are in arrear; so can a contributory on the B list (*o*). Any provision in the Articles which deprives members of their right to petition is void. See p. 123, *ante*.

The court is not bound to make the order on a contributory's petition, and may always **have regard to the wishes of the creditors and other contributories** (*p*).

The court may direct meetings of creditors or contributories to be held for the purpose of ascertaining their wishes, and must have regard to the value of the debt of each creditor and the voting rights of the contributories under the Articles (*p*).

The court will not order a winding up, if the interest of the petitioning contributory is very small, and the

(*m*) Companies Act, s. 178.
(*n*) *Ibid.*, s. 288.
(*o*) Buckley, 10th edit., p. 331.
(*p*) Companies Act, s. 288.

majority of the members do not wish the order to be made; or if the number of shareholders is very small:

Re Professional, etc., Building Society (1871), L. R. 6 Ch. 856.

Four members of a building society wished for compulsory winding up; the rest did not. The order was refused.

or if presented in bad faith.

Re Metropolitan Saloon Omnibus Co. (1859), 28 L. J. Ch. 830.

Certain creditors had brought a winding-up petition against the company, which was dismissed with costs. They then persuaded a shareholder to present a petition for the purpose of annoying the company: **Held,** the petition is *malâ fide* and bad.

But the court will generally make the order where there is anything which seems to require investigation.

Re Varieties, Limited, [1893] 2 Ch. 235.

The company was formed to build a music hall on land leased to the company by S. S was to build the hall. S. and his nominees held 3700 shares. The county council refused to sanction the plans. The holders of 3900 shares voted for a voluntary winding up and appointed the secretary as liquidator. 847 independent shareholders wanted a winding up by the court to inquire into the actions of S.:—**Held,** the conduct of S. may require investigation; the company must be wound up by the court.

Before 1907 it was held that a contributory must allege and prove that there are assets.

Now by sect. 171 (1) the Court must not refuse to make an order on the ground that there are no assets; but this section does not **entitle** a shareholder to have the company wound up, unless there is a case for investigation or other good reason for a compulsory order (*r*).

(*r*) *Kaslo-Slocan Mining Corporation, Limited,* [1910] W. N. 13; *Haycraft Gold Co.,* [1900] 2 Ch. 230.

If the company does not deliver a report to the Registrar before the statutory meeting, or does not hold the meeting, a contributory may petition to wind up the company (*s*).

The fact that a voluntary winding up has commenced does not prevent a contributory or a creditor from obtaining a winding-up order; but in the case of a petition by a contributory, the Court must be satisfied that the rights of the contributories will be prejudiced by the voluntary winding up (*t*) (see further p. 272, *post*).

2. **Petition by creditor.**

The court (except in special circumstances) **is bound to make the order to wind up** if the creditor can prove that he has an undisputed debt and any of the things have happened which are enumerated in s. 168 (see pp. 249, 250). And the burden of proving that there are assets does not lie on the creditor (*u*).

But the court may refuse to order a winding up, if the majority of creditors do not want it:

Re Ilfracombe Building Society, [1901] 1 Ch. 103.

All the creditors except C. agreed to accept 12*s.* 6*d.* in the pound. C. afterwards petitioned to wind up:—**Held,** the petition must be dismissed.

or if the order will do no good.

Before the Act of 1907 the court would refuse to make the order if there was nothing to wind up or no assets for the ordinary creditors (see *Re Greenwood & Co.*, [1900] 2 Q. B. 306).

(*s*) Companies Act, ss. 168 and 170.
(*t*) Companies Act, s. 255.
(*u*) *Re Krasnapolsky Co.*, [1892] 3 Ch. 174.

But now "an order to wind up a company shall not be refused on the ground only that the assets of the company have been mortgaged to an amount equal to or in excess of those assets, **or that the company has no assets**" (*x*).

And even before the Act of 1907 the court has made the order in special circumstances, though there was probably nothing for the unsecured creditors.

Re Alfred Melson & Co., [1906] 1 Ch. 841.

The debenture-holders were carrying on business in the name of the company, but no receiver had been appointed. There was no proof that there would be anything for the other creditors:—**Held,** even if there is nothing for the ordinary creditors it may be "just and equitable" that the company should be wound up —for they are obtaining credit from persons whose rights may be swallowed up at any moment by the debenture-holders (*y*).

The court is not bound to make the order at once; but may direct the petition to stand over for a time.

Re Brighton Hotel Co. (1868), L. R. 6 Eq. 339.

The shareholders were getting up a subscription to pay off the immediate debts and were going to appoint new directors and cut down the expenses:—**Held,** the petition must stand over for four weeks to allow this to be done.

A creditor whose debt is disputed on some substantial ground cannot generally get a winding-up order. The court may either order the petition to stand over until the validity of the debt can be determined or may dismiss the petition, and may even restrain the creditor by injunction from bringing a threatened petition.

(*x*) Companies Act, s. 171. *Re Clandown Colliery Co.*, [1915] 1 Ch. 369.

(*y*) See as to the position of creditors in this case, *London Pressed Hinge Co.*, [1905] 1 Ch. 576, and for cases in which a similar order was made, *Re Chic, Limited*, [1905] 2 Ch. 345; and *Re Crigglestone Coal Co.*, [1906] 2 Ch. 327.

Niger Merchants' Co. v. Capper (1877), 18 Ch. D. 557 n.

C. claimed £500 from the company for services. The company said they owed C. £260 only and had a set-off for this. C. then threatened to wind up the company if he was not paid. The company was solvent:—**Held**, injunction granted to restrain C. from bringing the petition.

An injunction can also be obtained to prevent the advertising of a winding-up petition (*re A. Company*, [1894] 2 Ch. 349).

But the court will sometimes decide the validity of the debt forthwith.

Re Imperial Silver Quarries Co. (1868), 16 W. R. 1220.

J. sold a silver mine to the company for shares and debentures. The principal secured by the debentures was repayable out of profits. J. sold six debentures to A. One and a half years' interest became due, but there had been no profits. A. petitioned to wind up the company. The company disputed A.'s claim on the ground that the interest was payable out of profits only:—**Held**, this was not a very substantial dispute, and depended only on the construction of the debentures; the court decided that A.'s claim was good and made the order to wind up.

A debenture-holder may petition if the principal sum is payable to the debenture-holders direct, but **not** if it is payable to the trustees of a debenture trust deed (*Re Uruguay Central Rail. Co.* (1879), 11 Ch. D. 372) (*z*), and the order has been refused where the debenture-holders had power to appoint a receiver, and had not done so (*a*).

The assignee of a debt can petition, and so can the assignee of part of a debt (*aa*), but not a creditor of a third party who has, by means of a garnishee

(*z*) *Re Dunderland Co., Limited*, [1909] 1 Ch. 446 (Debenture Stock holder).

(*a*) *Re Exmouth Docks Co.* (1873), L. R. 17 Eq. 181.

(*aa*) *Re Steel Wing Co., Ld.*, [1921] 1 Ch. 349.

order, attached a debt due from the company to the third party.

A creditor who has commenced a petition cannot sell his debt and the right to carry on the petition (*Re Paris Skating Rink* (1877), 5 Ch. D. 959).

A creditor whose claim is contingent or prospective can petition on giving security for costs (*b*), and on showing that a prima facie case for winding up has arisen.

British Equitable Bond, etc., Limited, [1910] 1 Ch. 574.

The holder of an insurance policy which had not matured presented a petition. **Held,** he can petition.

A creditor whose claim is unliquidated cannot petition; he must first get a judgment fixing the amount of the debt. The creditor's **debt need not amount to £50**; but the court will not usually make a winding-up order if the petitioning creditor's debt is small. The £50 mentioned in s. 169 (see p. 251) is usually regarded as suggesting the minimum amount, and if the total amount of the debts due to the petitioning (*c*) creditors and those supporting the petition is less than £50 the court will not make the order unless there are special circumstances (*d*).

Where the company refused to pay the debt because it was thought to be too small to support a winding-up petition, the court made a compulsory order (*re World Industrial Bank, Limited,* [1909] W. N. 148).

The Official Receiver can petition for a compulsory winding up after a voluntary winding up has commenced (*e*).

(*b*) Companies Act, s. 170 (1) (c).
(*c*) *Re Leyton Cycle Co.*, [1901] W. N. 225.
(*d*) *Re Industrial Assurance Association*, [1910] W. N. 254.
(*e*) Companies Act, s. 170 (2).

A husband who is a contributory in respect of his wife's share can present a petition (*f*).

The winding-up order operates for the benefit of all creditors and contributories (*g*).

An action will lie for maliciously presenting a winding-up petition.

Quartz Hill Co. v. Eyre (1883), 11 Q. B. D. 674.

Held, no special damage need be proved, "for the presentation of the petition is from its very nature calculated to injure the credit of the company."

SECTION 3.

What companies can be wound up by the court.

The court may wind up a **foreign company** if the management is conducted in England, but not otherwise.

Re Commercial Bank of India (1868), L. R. 6 Eq. 517.

The company was formed, incorporated and had its principal place of business in India. It had a branch office in England:—**Held**, it may be wound up in England.

Unregistered companies can be wound up.

E.g., an unregistered Friendly Society (*h*).

An **illegal** society cannot be wound up by the court (*i*).

SECTION 4.

Procedure on winding up by court.

Proceedings to enforce winding up are commenced by petition, which is somewhat similar in form to the

(*f*) S. 170 (3).
(*g*) S. 178.
(*h*) *Re Victoria Society*, [1913] 1 Ch. 167.
(*i*) *Re Padstow Assurance Association*, 20 Ch. D. 137.

petition on p. 141, and is supported by an affidavit of the petitioner (*j*).

The petition can in every case be presented in the High Court (*jj*), or, if the capital of the company paid up or credited as paid up is not more than £10,000, the petition may, if preferred, be presented in the county court (*jj*).

The court may either—

(1) dismiss the petition with or without costs; or

(2) order it to stand over (see p. 257); or

(3) make an order for winding up under supervision of the court (see p. 275); or

(4) make a compulsory order for winding up the company; or

(5) make any other order that may be just.

If the order is made to wind up compulsorily, the court appoints a liquidator and may settle the list of contributories, make calls, etc., but these powers are now usually exercised by the liquidator. If a contributory is dead, the court may order that his estate be administered by the court.

The winding-up dates from the presentation of the petition (*k*) except—

(1) where there has been a resolution to wind up voluntarily, when it dates from the resolution (*k*);

(2) for the purpose of preferential payments (see p. 283), where there has been no voluntary winding up, when it dates from the order (*l*).

(*j*) The affidavit of some other person will be accepted if there is reason for so doing (*Re African Farms, Limited*, [1906] 1 Ch. 640).
(*jj*) Companies Act, s. 163. (*k*) *Ibid.*, s. 175.
(*l*) *Ibid.*, s. 264 (7).

Persons entitled to be heard on the hearing of the petition are (1) the company; (2) any creditor; (3) any contributory.

The liquidator may apply to the court to determine any question arising in the winding up (*m*).

Questions arising in the winding up can, with certain exceptions, be heard by the registrar (*n*). An appeal from his decision lies to the judge (*Re Pretoria Pietersburg Railway Co.*, [1904] 2 Ch. 170). Questions between the company and persons who are not members of the company, *e.g.* vendors, cannot be tried in this way (*o*).

The petition must be presented at the registrar's office and must be advertised in the London *Gazette* and one other London or local paper, or as the registrar shall direct (*p*).

A slight mistake in the form of the advertisement will not invalidate the proceedings (*q*).

A copy of the winding-up order, when made, must be forwarded to the registrar (*r*).

When a winding-up order has been made, the secretary and one of the directors must make out and submit to the Official Receiver within fourteen days a statement verified by affidavit showing the assets, debts and liabilities of the company with a list of creditors and their securities (*s*). The statement is open to the inspection of creditors and contributories on payment of a fee. A person making this statement is entitled to his costs out of the assets, provided he obtains the sanction of the Official receiver before incurring them (*t*).

The Official Receiver after receiving this statement reports to the court as to the assets and liabilities of the company, the

(*m*) Companies Act, s. 192 (3).
(*n*) Winding-up Rules, 1909, r. 5.
(*o*) *Centrifugal Butter Company*, [1913] 1 Ch. 188.
(*p*) Winding-up Rules, 1909, r. 27.
(*q*) *Re Saul Moss & Sons, Limited*, [1906] W. N. 142.
(*r*) Companies Act, s. 176.
(*s*) Companies Act, s. 181 (penalty £10 per day)
(*t*) W. U. Rule 54 of 1909.

causes of failure and whether inquiry is desirable. He may also point out any suspicious or fraudulent circumstances with a view to a public examination (*u*).

Costs.—If the petition is successful, the petitioner's costs are a first charge on the assets of the company available for the ordinary creditors; *e.g.*, **not** on property over which debenture-holders have a claim.

A person who lodges a second petition when one is already presented, may have to pay the costs.

Two companies cannot be wound up by the same order.

The court may stay the proceedings in the winding up, if they ought to be stayed for any reason (*x*).

Appeal lies to the court of appeal (*y*).

When the affairs of the company are completely wound up, the **court makes an order that the company be dissolved.** The liquidator must report this order to the registrar, who makes an entry in the register that the company is dissolved (*z*). The company then ceases to exist. **Leases held by the company come to an end** (*a*), **and freehold land held by the company reverts to the grantor** (*b*). Any chattels of the company that may happen to remain become vested in the Crown as *bona vacantia*.

(*u*) Companies Act, s. 182.
(*x*) *Ibid.*, s. 202.
(*y*) Security for costs must be given if the company appeals, *Consolidated South Rand, Limited*, 1909, W. N. 66.
(*z*) Companies Act, s. 221 (penalty £5 per day).
(*a*) *Hastings Corporation* v. *Letton*, [1908] 1 K. B. 378. The reversioner should be made a party to any proceedings. *Re Albert Road*, [1916] 1 Ch. 289.
(*b*) *Hastings Corporation* v. *Letton, ubi supra*, at p. 384. *Co. Lit.* 13 B.

Re Taylor's Agreement Trusts, [1904] 2 Ch. 737.

The liquidator of a company agreed to sell letters patent to A., but the company was dissolved before the patent was assigned to A. :—**Held,** the patent was vested in the Crown.

The Crown is not bound by trusts, and therefore does not become a trustee of such chattels for the purchaser; but it appears that a new trustee of the property may be appointed (*c*) and a vesting order can be made by the Court (*d*), or the assets may be distributed by the liquidator if the attorney-general consents on behalf of the Crown (*e*).

When a company has been dissolved, the court may within two years on the application of the liquidator or any person interested make an order declaring the dissolution to have been void (*f*).

Proceedings can then be taken as if the company had not been dissolved. But proceedings taken against the company after was dissolved are invalid (*g*). The person who obtains the order must deliver an office copy of the order to the registrar within seven days (*f*).

Spottiswoode, Dixon & Hunting, Ld., [1912] 1 Ch. 410.

The S. company held shares in the A. company which were not fully paid.

In 1909 the S. company was wound up for the purposes of reconstruction and a new company took over its assets and liabilities. The A. company had no notice of the liquidation.

In 1911 the A. company made a call on the shares, which the new company refused to pay :—**Held,** the A. company was a "person interested," and the dissolution of the S. company was declared void.

(*c*) *Re* 9, *Bomore Road,* [1906] 1 Ch. 359.
(*d*) Law of Property Act, 1925, s. 181.
(*e*) *Re Henderson's Nigel, Ltd.,* [1911] W. N. 159.
(*f*) Companies Act, s. 294.
(*g*) *Morris* v. *Harris,* [1927] A. C. 252.

A winding-up petition can only be withdrawn subject to the power of the court to substitute another creditor or contributory as petitioner (*h*).

For the effect of a winding-up order see Chapter XXII.

(*h*) Winding-up Rules, [1909] r. 36.

CHAPTER XX.

VOLUNTARY WINDING UP.

THE object of a voluntary winding up is that the company and its creditors shall be left to settle their affairs without coming to the court, but to provide them with every facility for applying to the court if necessary.

SECTION 1.

How and when a Company may be Wound up voluntarily.

There are three possible ways of winding up voluntarily. Each way requires a different form of resolution.

A company may be wound up voluntarily when (*a*)—

(1) the period fixed for the duration of the company has come to an end, **or** an event upon which the company is to be wound up has happened **and** the company has in general meeting passed an **ordinary resolution** to wind up; or

(2) the company has (for any cause whatever) passed a **special resolution** (*b*) to wind up voluntarily; or

(*a*) Companies Act, s. 225. (*b*) See p. 226.

(3) the company has passed an **extraordinary resolution** that it cannot by reason of its liabilities carry on its business, and that it is expedient that the company be wound up.

As to (1).—A company can only be wound up by ordinary resolution if it is bound to cease under the terms of its regulations.

As to (2).—The company may be wound up by special resolution for any reason, even if it is flourishing.

As to (3).—Where a company is to be wound up by extraordinary resolution, the notices calling the meeting must state that it is proposed to wind up the company because its liabilities prevent it from carrying on its business.

Re Silkstone Fall Colliery Co. (1875), 1 Ch. D. 38.

Notices were sent out of a meeting "to pass a resolution for the voluntary winding up of the company, if it should be determined to do so." An extraordinary resolution was passed for winding up:—**Held,** the notices were bad, as they did not specify that it was to be wound up for this reason.

A voluntary winding up dates from the passing of the resolution which authorises it (*c*).

Effect of voluntary winding up.

(1) **The company ceases to carry on its business** except for the purpose of beneficial winding up (*d*).

(2) **Transfers of shares are void** except with the sanction of the liquidator (*dd*).

(*c*) Companies Act, s. 227.
(*d*) *Ibid.*, s. 228. (*dd*) *Ibid.*, s. 229.

Taylor's Case, [1897] 1 Ch. 298.

After winding up T. transferred his shares to P., and P. transferred them to R. with the consent of the liquidator:—**Held,** the transfers were good. R. must be put on the A. list and T. and P. on the B. list of contributories.

Under the Act of 1908 transfers of shares made *bonâ fide* between the first and second meeting (in case of a special resolution to wind up) were good (*e*).

A transfer of debentures is not prohibited (*e*).

(3) **Alterations in the status of members are void** (*ee*).

Castello's Case (1869), L. R. 8 Eq. 504.

Special resolution to wind up passed August 7th. C. transferred his shares to an infant Q. on August 14th. Resolution confirmed August 23rd. The infant reached full age in October. The infant then confirmed the transfer:—**Held,** the transfer was void. Q. was an infant at the date of the winding up, and therefore cannot change his status so as to become capable of ratifying after the winding up.

(4) **The corporate state and powers of the company continue.**

SECTION 2.

Proceedings on Voluntary Winding up.

There are now two kinds of voluntary winding up—

1. **A members' voluntary winding up.**

In the case of a solvent company a majority of the directors may make and deliver to the Registrar a statutory declaration to the effect that in their opinion

(*e*) Buckley, 10th ed., p. 462.
(*ee*) Sect. 229.

the company will be able to pay its debts in full within twelve months (s. 230).

The company in general meeting appoints a liquidator and fixes his remuneration. On the appointment, all the powers of the directors cease, except so far as the company in general meeting or the liquidator sanction their continuance (s. 232).

If a vacancy occurs, the company in general meeting may fill up the vacancy. Any contributory can call the meeting (s. 233).

If the winding up continues for more than one year, the liquidator must summon a general meeting of the company at the end of the first year and each successive year, and lay before the meeting an account (s. 235).

When the company's affairs are fully wound up, the liquidator must make up a final account and call a general meeting of the company (called the "final meeting"), which must be advertised in the *Gazette*. Within a week after the final meeting the liquidator must send the registrar a copy of the accounts, and make a return of the holding of the meeting. The registrar registers the accounts and returns, and at the end of three months from the date of registration the company is dissolved (s. 236).

2. **A creditors' voluntary winding up.**

In any case **where the declaration of solvency has not been made,** the company must call a meeting of the creditors for the same day as or on the next day after the meeting at which the resolution for voluntary winding up is to be proposed. The meeting must be advertised in the *Gazette*, and the directors must lay before the meeting of the creditors a statement of the

position of the company with a list of its creditors. There are penalties in default (s. 238).

The creditors and the company may each nominate a liquidator, but the nomination of the creditors will prevail, subject to an application to the court (s. 239).

The creditors, at their meeting, may appoint a **committee of inspection**, and the company may appoint not more than five persons to be members of the committee, subject to the power of the creditors to disapprove of any persons so appointed (s. 240).

The committee of inspection or the creditors may fix the remuneration of the liquidator. On the appointment of the liquidator all the powers of the directors cease, except so far as the committee of inspection or the creditors sanction their continuance (s. 241).

In case of a vacancy, the creditors may fill up the vacancy (s. 242).

If the winding up continues more than a year, the liquidator must summon a general meeting of the company and a meeting of the creditors at the end of the first year and of each successive year, and lay an account before the meetings (s. 244).

When the affairs of the company are fully wound up, the liquidator must make up an account and call final meetings of the company and the creditors, which must be advertised in the *Gazette*, and lay the account before the meetings. Within a week after the meetings the liquidator must send to the registrar a copy of the account and a return, which will be registered, and on the expiration of three months from the registration the company is dissolved (s. 245).

In either case—

(1) Notice of the special or extraordinary resolution to wind up must be advertised in the *London Gazette* (*f*) within seven days.

(2) (*g*) The property of the company is applied first in satisfaction of the liabilities of the company *pari passu;* and subject thereto is distributed among the members.

(3) The liquidator may, without leave of the court, exercise all the powers of a liquidator appointed by the court. (See p. 296, *post.*) (*h*)

(4) The liquidator settles the list of contributories, and his list is *primâ facie* evidence of their liability (*h*).

(5) The liquidator **must pay the debts of the company** and settle the rights of the contributories *inter se.*

If he fails to do so, the creditor or contributory who is not paid can apply to the court under section 252 of the Companies Act; but he cannot claim payment from the liquidator personally either under this section (*i*) or by an action commenced by writ (*k*); but if the liquidator has destroyed the remedy of the creditor or contributory by allowing the company to be dissolved or (possibly) by parting with all its assets, the liquidator becomes personally liable.

Pulsford v. Devenish, [1903] 2 Ch. 625.

The liquidator **negligently** omitted to pay one of the creditors of the company. The company was wound up and ceased to exist:—**Held,** the liquidator was still under his statutory liability to pay the debts, and must pay the plaintiff out of his own pocket.

(*f*) Companies Act, s. 226 (penalty £5 a day).
(*g*) Companies Act, s. 247.
(*h*) Companies Act, s. 248.
(*i*) *Hill's Waterfall Co.*, [1896] 1 Ch. 947.
(*k*) *Knowles* v. *Scott*, [1891] 1 Ch. 717.

The liquidator or any creditor or contributory may apply to the court (*l*) as in a winding up by the court, and the jurisdiction of the court is generally much the same as on a winding up by the court.

If after the "final meeting" (see p. 269, *ante*) it becomes desirable to keep the company alive for more than the three months, this may be done by an order deferring the date of dissolution (*m*), or the dissolution may be declared void (*n*).

The costs of a voluntary winding up are payable first out of the assets (*o*).

A creditor has a right to a winding up by the court in spite of a voluntary winding up having commenced (*p*).

The court will not as a rule upon the petition of a contributory make an order for compulsory winding up after a voluntary winding up has commenced, unless—

(1) the voluntary winding up is fraudulent; or

(2) there are circumstances of suspicion; or

(3) a searching investigation is needed.

But the court has a discretion and has power to make the order whenever the contributory would be prejudiced by a voluntary winding up (*q*).

Re National Company for Distribution of Electricity, [1902] 2 Ch. 34.

After voluntary winding up commenced, some fully paid shareholders presented a petition for compulsory winding up, though

(*l*) Companies Act, s. 252.
(*m*) Sect. 236 (4). An office copy of the order must be filed within 7 days.
(*n*) Companies Act, s. 294.
(*o*) *Ibid.*, s. 254.
(*p*) *Ibid.*, s. 255.
(*q*) *Ibid.*, s. 255.

there were ample assets, on the ground that some of the directors had received presents:—**Held,** a compulsory order may be made on the petition of fully paid shareholders, where there are surplus assets, and even though there is no fraud. But not in this case, as it would not bring anything to the shareholders.

If the court makes an order for compulsory winding up after a voluntary winding up has commenced, the commencement of the winding up dates from the resolution, and the court will, except in case of fraud or mistake, adopt all the previous proceedings (*r*).

For purposes of fraudulent preference, the commencement of the winding up corresponds with the presentation of the bankruptcy petition (*s*).

Arrangements by a company with its creditors can be made as follows:—

A. Under section 251, in the course of voluntary liquidation.

The arrangement is binding:—

(i) On the company, if sanctioned by an extraordinary resolution;

(ii) On the creditors if acceded to by three-quarters in number and value of the creditors.

but subject to appeal to the court (*t*).

B. Under section 153, whether the company is being wound up or not.

The court may for this purpose call meetings of creditors and members, or classes of creditors and members, and may declare the arrangement binding,

(*r*) Companies Act, s. 175.
(*s*) *Ibid.*, s. 265 (2).
(*t*) Companies Act, s. 251 (2).

if it is confirmed by a **majority in number** representing **three-fourths in value** of the creditors or members present (in person or by proxy) **and voting** at the meeting (*u*).

Sometimes one class of shareholders (or creditors) is affected more or less than another class. If so, separate meetings of each class affected by the arrangement must be held.

Re Tea Corporation, Limited, [1904] 1 Ch. 12 at p. 23.

On the winding up, the assets were not sufficient to leave anything for the ordinary shareholders. An arrangement was made; the preference shareholders and creditors voted for it; but the ordinary shareholders voted against it:—**Held**, as the ordinary shareholders had no interest in the assets, their dissent did not matter.

An arrangement can be made though there is no dispute to compromise (*x*).

(*u*) Companies Act, s. 153.
(*x*) *Guardian Assurance Co., Ld.*, [1917] 1 Ch. 431.

CHAPTER XXI.

WINDING UP UNDER SUPERVISION OF THE COURT.

WHEN a resolution has been passed to wind up voluntarily, the court may order that the winding up shall proceed under the supervision of the court, or a creditor may petition that the company be wound up under the supervision of the court (*a*).

The effect is that the liquidator may exercise all his powers without the sanction of the court as in a voluntary winding up, but subject to such restrictions as the court may direct.

The court has a discretion, both as to whether the order shall be made, and as to the amount of restriction that shall be imposed on the liquidator.

Re Watson & Sons, [1891] 2 Ch. 55.

Held, the court has power by restrictions imposed on the voluntary liquidator, almost to turn a voluntary liquidation into liquidation by the court, or it may relax the restrictions according to the requirements of each case.

In these respects the court may have regard to the wishes of the creditors and contributories (*b*).

(*a*) Companies Act, s. 256. The corresponding section (199) of 1908 did not apply to a winding up commenced by ordinary resolution.
(*b*) *Ibid.*, s. 288.

The effect of the order is the same as an order for compulsory winding up, except that the following sections do not apply (*c*).

Section 181, which requires a statement of the company's affairs to be submitted to the Official Receiver.

Section 182, which requires the Official Receiver to make a report to the court.

Sections 183, 184, 185, 186, and 188, relating to the appointment of liquidators by the court. (Sub.-sect. (5) of sect. 188, making the acts of a liquidator valid in spite of any defect in his appointment, applies to a winding up under supervision.)

Section 186, requiring the liquidator to give information to the Official Receiver.

Section 194, requiring payment of the moneys in the hands of the liquidator into the Bank of England.

Sections 193 and 195, requiring the liquidator to send accounts to the Board of Trade and to keep proper books.

Section 197, as to the release of the liquidators.

Sections 192 and 196, as to the control of the liquidator by the meetings of creditors and the Board of Trade.

Section 198, as to meetings of creditors and contributories.

Sections 199, 200, and 209, as to committee of inspection and special managers.

Section 307, as to the appointment of the Official Receiver to be receiver for debenture-holders.

Section 220, as to making rules for the conduct by the liquidator of the powers of the court.

Section 216, providing for the public examination of promoters, directors, or other officers of the company.

Section 217, as to restraining fraudulent persons from managing companies.

Since the Companies Act, 1900, gave creditors power to apply to the court in a voluntary winding up, the chief reason for ordering a winding up under supervision has gone. But the order is still sometimes made.

(*c*) Companies Act, s. 260 and Schedule IX.

Advantages.

(i) Section 177 applies, and no proceedings can be commenced or continued against the company without leave of the court.

(ii) Section 202 applies, and the court may make an order staying proceedings in the winding up.

(iii) Section 259 applies, and the court may appoint an additional liquidator.

(iv) The order provides that no costs or remuneration shall be paid unless they are taxed or allowed by the registrar.

If a petition is presented for winding up under supervision, the court cannot make a compulsory order on the motion of a creditor (*d*); and if an order is made for winding up under supervision, a creditor cannot present a petition for compulsory winding up, but the official receiver may do so (*e*).

Dissolution.

This can only be done by an order of the Court under section 221, as this section is not excluded by section 260.

(*d*) *Chepstow Bobbin Mills Co.* (1887), 36 Ch. D. 563.
(*e*) *Jubilee Sites Syndicate*, [1899] 2 Ch. 260.

CHAPTER XXII.

CONSEQUENCES OF WINDING UP.

Notice.—Every invoice, order for goods or business letter on which the name of the company appears must contain a statement that the company is being wound up (*a*).

(1) **As to shareholders.**

On a winding up the liquidator settles a list of "**contributories**" (*aa*).

Every past or present shareholder becomes a contributory, *i.e.*, is bound to contribute towards payment of the debts and winding-up expenses of the company unless he can bring himself within the following exceptions.

In the case of a company limited by shares **no contribution can be required from any member exceeding the amount, if any, unpaid on the shares** in respect of which he is liable.

(As to Guarantee Companies, see p. 247, *ante*.)

A **past** member is **not** liable to contribute—

(1) if he has ceased to be a member for one year or upwards before the commencement of the winding up; or

(*a*) Companies Act, s. 280.
(*aa*) Companies Act, s. 203.

(2) in respect of any debt of the company contracted after he ceased to be a member; or

(3) unless it appears to the court that the existing members are unable to satisfy the contributions required to be made by them.

Result. A present member is only liable to the extent to which his shares are not fully paid up.

A past member in addition to this limitation can only be made to contribute, if he has ceased to be a member within the year, and the present members fail to meet their liabilities in respect of the debts incurred while he was a member.

There are therefore two limitations on the liability of a B contributory—

(1) He is only liable to the extent to which the transferee of his shares has failed to pay them up in full.

(2) He can only be called upon to pay so much of this amount as is necessary to pay so much of the debts incurred while he was a member as remain unpaid after applying all the contributions of the A contributories and all the assets of the company *pari passu* towards payment of all its debts, irrespective of the date when they were incurred (*b*).

Present members are put on the "A" list.

Past members are put on the "B" list.

(As to the method of settling the list, see pp. 297 and 298.)

A member may be liable for all the debts of the company, if he knows that the company is carrying on business with less than seven members (*c*).

A person who is wrongly put on the list of contributories may apply to the court to rectify the list. He does not lose this right

(*b*) Companies Act, s. 157 (1) (*d*).
(*c*) Companies Act, s. 28.

by delay (*d*) unless his liability has been determined by an order of the court, in which case he must appeal within the proper time (*e*).

The liability is enforced by means of calls.

In a winding up by the court the liquidator can make a call with the sanction of the committee of inspection or an order of the court (*f*).

A call so made can be enforced against any person whose name has been finally settled on the list of contributories by an order of the court made in chambers or a summons by the liquidator (*g*). An order so made is conclusive unless overruled on appeal (*h*).

On a voluntary winding up the liquidator can make the call without any sanction.

He should follow the procedure adopted under a winding-up order, but is not bound to do so (*i*). The list of contributories settled by the liquidator in a voluntary winding up is *primâ facie* evidence (*k*), but not conclusive evidence of the liability of the contributory (*i*). The call can be enforced by an action, or by summons to the court, and the shareholder is allowed, if he can, to disprove his liability.

So soon as a call is made, the liability of the contributory arises and is in the nature of a speciality debt (*l*).

Calls may be made in respect of partly paid shares in order to distribute the assets fairly among all the shareholders (*m*), unless the articles provide otherwise (*mm*).

(*d*) *Shewell's Case*, L. R. 2 Ch. 387.
(*e*) *Dickson's Case*, 12 Ch. D. 298.
(*f*) Companies Act, s. 206. W. U. Rules, 1909, R. 75.
(*g*) W. U. Rules, 1909, R. 87.
(*h*) Companies Act, s. 208.
(*i*) Buckley, 10th ed., p. 434.
(*k*) Companies Act, s. 248 (1) (*c*). (*l*) *Ibid.*, s. 159.
(*m*) *Welton* v. *Saffery*, [1899] A. C. 299.
(*mm*) *Re Kinatan (Borneo) Rubber, Ltd.*, [1923] 1 Ch. 124.

The liabilities of the contributories and their rights over the assets of the company are adjusted by the court.

Re Wakefield Rolling Stock Co., [1892] 3 Ch. 165.

The capital was divided into 30,000 fully paid £1 shares and 24,000 shares of £5 each on which £1 was paid. Some of the £5 shares had been fully paid up in advance of calls. On the winding up, after paying the debts, there was not enough to pay all the contributories in full:—**Held**, the assets must be applied (1) in paying back the amount advanced on the £5 shares with interest; (2) in paying 16*s.* per share on the fully paid £1 shares; and (3) the rest to be divided *pro rata* between the holders of all shares.

A contributory who is a creditor of the company **cannot set off his debt against his liability for calls** (*n*); whether the call was made by the company before liquidation or by the liquidator afterwards.

In re G. E. B. (a debtor), [1903] 2 K. B. 340.

The liquidator obtained judgment against B. for calls. The company owed money to B. The liquidator served a bankruptcy notice on B. B. claimed that the notice was bad as he had a right of set off, and, therefore, did not owe anything to the company:—**Held**, the notice was good; for he had no right of set off (*o*).

The court may order a contributory to pay any other debt due from him to the company (*p*). *When all the creditors are paid in full*, any debt due from the company to the contributory may be set off against subsequent calls (*q*). Debts due to the company and calls made before winding up may be set off against debts due from the company in case of unlimited companies (*r*).

A fully paid shareholder may not be put on the list of con-

(*n*) Even if there is an express agreement to do so. *Law Car and General, etc., Company*, [1912] 1 Ch. 405.

(*o*) And see *Alliance Film Corporation* v. *Knowles*, 43 T. L. R. 678.

(*p*) Companies Act, s. 205.

(*q*) Sect. 205 (3). (*r*) Sect. 205 (2).

tributories merely to give the court the power to order him to pay his debts to the company.

Re Marlborough Club Co. (1868), L. R. 5. Eq. 365.

The liquidator proposed to supplement the list of contributories by a list of fully paid shareholders who owed money for subscriptions, drinks, etc., to the club:—**Held,** these shareholders cannot be put on the list solely to give the court jurisdiction to enforce payment of debts due from them.

If a contributory dies, his personal representatives become liable to pay the calls out of his assets, and his estate may be administered by the court for this purpose (*s*).

If he becomes bankrupt his trustee in bankruptcy represents him, and all calls made and the estimated value of future calls are provable in the bankruptcy (*t*).

The husband of a woman married before 1883 becomes liable as a contributory in respect of shares held by her (*x*).

If a contributory is about to abscond or remove his property in order to evade calls, he may be arrested and his property seized (*y*).

Every transfer of shares (except with the sanction of the liquidator) or alteration in the status of a shareholder, after commencement of the winding up, is void unless the court otherwise orders (*z*).

As between the contributories all books and papers of the company and of the liquidators are *primâ facie* evidence (*a*).

A contributory is entitled to inspect the file of the company kept by the registrar (*b*).

(2) As to the creditors of the company.

In the winding up of any company whose assets are insufficient for the payment of its debts **the same**

(*s*) Companies Act, s. 160.
(*x*) *Ibid.*, s. 162.
(*z*) *Ibid.*, s. 229.
(*b*) W. U. Rules, 1909, r. 19.
(*t*) *Ibid.*, s. 161.
(*y*) *Ibid.*, s. 218.
(*a*) *Ibid.*, s. 282.

rules prevail as to (1) the respective rights of secured and unsecured creditors, (2) as to debts provable, and (3) as to the valuation of annuities and future and contingent liabilities, **as are in force under the law of bankruptcy** (*c*).

This applies to a voluntary winding up if the company is insolvent (*d*).

Result of this Rule.

A **secured creditor** may either (1) value his security and prove in the winding up for the balance of his debt, or (2) give up his security and prove for the whole amount (*e*).

A judgment creditor who has levied execution before the winding up may realise his security (*f*).

Certain "**preferential payments**" must be made before any other unsecured debts, and where **the security is only a floating charge** secured by debentures, these preferential payments must be paid before the debenture-holders (*g*), but not before the costs of liquidation (*h*).

These **preferential payments** are—

(i.) Rates and taxes for not more than one year.

(ii.) Wages of a clerk or servant for not more than four months and not exceeding £50.

(*c*) Companies Act, s. 262.
(*d*) *Re Thos. Salt & Co.*, [1908] W. N. 63.
(*e*) *Re Ligonel Spinning Co.*, [1900] 1 I. R. 326.
(*f*) Or where he has been prevented from levying execution by a trick. *Armorduct Co.* v. *General Incandescent Co.*, [1911] 2 K. B. 143.
(*g*) Companies Act, s. 264.
(*h*) *Re Glyn Corrwg Colliery Co.*, [1926] Ch. 951.

This may include the secretary (*i*), but not a managing director (*j*), or a contributor to a magazine (*k*).

(iii.) Wages of a workman for not more than two months and not exceeding £25.

(iv.) Compensation due to an employee under the Workmen's Compensation Act, 1925 (*l*).

(v.) Sums payable by an employer under the National Insurance, Pensions, and Unemployment Insurance Acts (*m*).

The material date for these calculations is the date of the winding-up order, or, if there has been a previous voluntary winding up, the date of the commencement of the winding up.

These preferential debts have priority also over a landlord's right of distraint, if exercised within three months before the date of the winding-up order, and they are a first charge on the goods so distrained or the proceeds of sale (*n*).

Crown debts have no priority (*nn*).

Unsecured creditors are paid in the following order:—

(1) Preferential payments as above.

(2) Other debts *pari passu*—except that

(3) debts in respect of which a rate of interest is paid varying with the profits of a business are postponed until other debts are paid in full.

(*i*) *Cairney* v. *Back*, [1906] 2 K. B. 746.
(*j*) *Re Newspaper's Syndicate*, [1900] 2 Ch. 349.
(*k*) *Re Beeton & Co.*, [1913] 2 Ch. 279.
(*l*) *Re Clemens Aluminium Co.* (1924), 41 T. L. R. 138.
(*m*) Companies Act, s. 264.
(*n*) Companies Act, s. 264. The landlord stands in the place of the preferential creditor in respect of any moneys so paid.
(*nn*) *Food Controller* v. *Cork*, [1923] A. C. 647. And as to income tax deducted from debenture interest, see *Re Lang Propeller, Ld.*, [1927] 1 Ch. 120.

Debts which may be proved include "All debts payable on a contingency, and all claims against the company, present or future, certain or contingent, ascertained or sounding in damages" (*o*).

Re Patent Floor Cloth Co. (1872), 26 L. T. 467.

D. and G. were employed by the company as travellers on commission for three years. During the first year they made £400. The company was wound up. D. and G. claimed £800 damages:— **Held,** they can claim for a fair proportion of their prospective loss.

Persons who claim to be creditors must prove their debts within the time fixed by the liquidator (*p*).

If a creditor does not prove within the time fixed, he may still prove, and may then be paid out of any assets remaining in the hands of the liquidator; but he cannot upset any dividend which has been paid (*q*).

If he has not claimed enough in his proof, he may get leave to amend it (*r*).

The costs of proving a debt are added to the amount of the debt. But if the creditor commences an action for the debt before the winding up, and the liquidator continues to defend the action, and fails, the costs are paid first out of the assets (*s*).

The court has a discretion and has refused to allow costs to be paid in this way, where the liquidator offered to allow the creditor to prove in the winding up for an amount to be ascertained in the winding-up proceedings (*t*).

The liquidator must not pay statute-barred debts if the shareholders object (*u*).

The taxation of a solicitor's bill of costs against the

(*o*) Companies Act, s. 261. As to the measure of damages see *Re Vic Mill*, [1913] 1 Ch. 465. *Re Law Car & General Co.*, [1913] 2 Ch. 103.
(*p*) *Ibid.*, ss. 210 and 220, and rule 102 of 1909.
(*q*) *General Rolling Stock Co.* (1871), L. R. 7 Ch. 646.
(*r*) *Re Henry Lister*, [1892] 2 Ch. 417.
(*s*) *Wenborn & Co.*, [1905] 1 Ch. 413.
(*t*) Cf. *Rose & Co.* v. *Gardden Lodge Co.* (1878), 3 Q. B. D. 235.
(*u*) *Re Fleetwood, etc., Co.*, [1915] 1 Ch. 486.

company must be dealt with in the winding up (*x*) even if the work was done before winding up, if the solicitor has submitted to the jurisdiction (*y*).

A creditor can prove for **interest** on his debt up to the date of the winding up, as follows—

(1) If interest has been agreed to be paid, interest may be claimed at the agreed rate.

(2) If the debt is payable at a certain date under a written instrument, interest at 4% from that date.

(3) Otherwise interest at 4% from the date of a demand in writing stating that interest will be claimed (*z*).

If the company is insolvent, then both in a compulsory and a voluntary liquidation, interest ceases to run at the commencement of the winding up (*a*).

If the company is solvent, *i.e.*, if there is a surplus after paying capital and interest on all debts up to the commencement of the winding up, interest is payable from that date up to the date of payment (*b*).

A creditor who has proved his debt may inspect the file of proceedings of the company kept by the registrar (*c*).

Set Off.—The same rules apply as in bankruptcy.

Therefore where there have been mutual dealings between a creditor and the company, the debt due from one can be set off against the debt due from the other, and the creditor can only prove, or be made liable for, the balance (*d*).

As to set off in case of calls, see p. 281.

(*x*) *Re Foss, Bilbrough & Co.*, [1912] 2 Ch. 161.
(*y*) *Re Palace Restaurants, Ld.*, [1914] 1 Ch. 492.
(*z*) W. U. Rule (1909) 97. As to interest on a secured debt, see *ante*, p. 177, and *Re Marine Mansions*, L. R. 4 Eq. 601.
(*a*) *Re Thos. Salt*, [1908] W. N. 63.
(*b*) *W. W. Duncan & Co.*, [1905] 1 Ch. 307.
(*c*) W. U. Rules, 1909, r. 19.
(*d*) Bankruptcy Act, 1914, s. 31, and see *H. E. Thorne & Son, Ld.*, [1914] 2 Ch. 438. As to set off by a liquidator against an insolvent estate, see *Peruvian Railway Co.*, [1915] 2 Ch. at p. 150.

The bankruptcy rules as to **fraudulent preferences** also apply (*e*).

Re Jackson & Bassford, Limited, [1906] 2 Ch. 467.

The principal director of a private company guaranteed the overdraft of the company at its bankers, and the company agreed to give him debentures "whenever called upon by him to do so." The director called for his debentures less than four weeks before the company was wound up:—**Held**, the debentures were a fraudulent preference.

The commencement of the winding up corresponds with the presentation of the bankruptcy petition (*e*).

The sale of an insolvent business to a private company for shares or debentures may be set aside as fraudulent (*f*), or may be treated as an act of bankruptcy (*g*).

If it appears that the company has **carried on business fraudulently**, the court may order any of the directors who were responsible for the fraud to be **personally liable, without any limit**, for the debts of the company (*gg*).

Deed of Arrangement.

An assignment by a company of all its property to a trustee for all its creditors is void (*h*).

If a **floating charge** is created within **six months** of a winding up, the charge is void except as to any

and as to set off between two companies in liquidation, *National Live Stock Co.*, [1917] 1 Ch. 628.

(*e*) Companies Act, s. 265.

(*f*) *Re Goldburg*, [1912] 1 K. B. 384.

(*g*) *Re David & Johnson*, [1914] 2 K. B. 694.

(*gg*) Companies Act, s. 275.

(*h*) Companies Act, s. 265 (3), and see *Gonville's Trustee* v. *Patent Caramel Co.*, [1912] 1 K. B. 599. A debenture containing a floating charge has been held to be an "assignment" within this section. *London Joint, etc., Bank* v. *Dickinson*, [1922] W. N. 13.

money paid at the time the charge was given, unless the company can be proved to have been solvent (*i*).

Columbian Fireproofing Co., [1910] 1 Ch. 758.

Money advanced a few days before the charge was given and in reliance on a promise to execute the charge was held to be money paid "at the time."

The payment must be a payment in cash (*k*).

The **reputed ownership** clause (*l*) (by which the property of other persons left in the possession of the bankrupt may pass to the trustee in bankruptcy) does not apply to the winding up of a company.

Gorringe v. Irwell Works (1886), 34 Ch. D. 129.

C. & Co. owed money to the I. Company. The I. Company owed money to H. & Co. The I. Company wishing to pay H. & Co., wrote to them, "We hold at your disposal £425 due to us from C. & Co." No notice of this assignment was given to the debtor (C. & Co.). The I. Company was wound up:—**Held,** the assignment is good (as between the I. Company or their liquidator and H. & Co.). The reputed ownership clause does not apply to the winding up of companies.

(3) **As to the servants of the company.**—A winding up by order of the court operates as a discharge of the servants of the company.

Measures Brothers, Limited v. Measures, [1910] 1 Ch. 336.

M. agreed to act as director for the company for seven years and that he would not engage in any competing business for seven years after he should cease to hold office. The company was ordered to be wound up:—**Held,** the winding-up order operated as a wrongful dismissal of M., and he was free from his agreement not to compete with the company.

(*i*) Companies Act, s. 266; and see *Re F. and E. Stanton, Ld.*, [1929] 1 Ch. 180.

(*k*) *Orleans Motor Co.*, [1911] 2 Ch. 41, and see *Gregory Love & Co.*, [1916] 1 Ch. 203.

(*l*) S. 38 (2) (*c*) of the Bankruptcy Act, 1914.

A voluntary winding up which involves a discontinuance of the business also operates as a discharge, and may give rise to a claim for damages where there is an agreement for employment for a fixed time (*m*).

(4) **As to the officers of the company.**—When a winding-up order has been made, or a liquidator appointed in a voluntary winding up, the powers of the directors cease (*n*).

When a winding-up order has been made the **court may summon any officer of the company**, or any person indebted to the company, or who has property of the company in his possession, or who can give any information as to the company and order him to bring with him any books and documents relating to the company (*o*).

If the official receiver has reported that fraud has been committed, the court may order that any person who has taken part in the promotion of the company, or has been a director or officer of the company, shall attend and be **publicly examined** on oath as to the formation and business of the company and as to his conduct (*p*).

There need only be a *primâ facie* case of suspicion.

Re Bank of Hindustan (1871), L. R. 13 Eq. 178.

F. held forty-five shares in the company and could not be found. Mrs. E., his mother-in-law, refused to give his address :— **Held**, an order may be made for her examination.

Such an order will not be made merely for the purpose of enabling a dissentient shareholder in a reconstruction (see p. 296) to ascertain the value of his share of the assets (*Re British Building Stone Co.*, [1908] 2 Ch. 450).

(*m*) *Shirreff's Case*, L. R. 14 Eq. 417, and *Reigate* v. *Union Co.*, [1918] 1 K. B. 592.
(*n*) Companies Act, ss. 232, 241.
(*o*) Companies Act, s. 214.
(*p*) *Ibid.*, s. 216.

The examination may be directed to be made in open court; but only in special circumstances (*q*).

The person examined must answer questions which relate to mere hearsay, but not questions which may tend to incriminate him (*r*).

If any director, promoter, liquidator or officer of the company has misapplied or retained money or property of the company or has been guilty of **misfeasance or breach of trust**, the court may examine into his conduct and order him to repay or restore the money or property or to pay compensation.

The official receiver or liquidator or any creditor or contributory may apply to the court by summons for this purpose (*s*). The court can direct or authorise the liquidator to prosecute any officer or member of the company who has been guilty of any criminal offence in relation to the company and may order the costs of the prosecution to be paid out of the assets of the company (*t*).

An officer of the company may inspect the file of proceedings of the company free of charge (*u*).

"**Officer of the company**" includes the directors, managers, etc., and may include the secretary, solicitor (*x*), or auditors (*y*) of the company.

(5) **As to dispositions by the company.**—Dispositions by the company of its property after the commencement of the winding up are void unless the court otherwise orders.

(*q*) *Re Property Insurance Co.*, [1914] 1 Ch. 775.

(*r*) The person examined may be entitled to his costs if he is a party or likely to be a party, but not otherwise (*Re Appleton*, [1905] 1 Ch. 749).

(*s*) Companies Act, s. 276.

(*t*) *Ibid.*, s. 277.

(*u*) W. U. Rules, 1909, R. 19.

(*x*) *E.g.* if he is employed at a salary. *Re Harper's Ticket Co.*, 1912, W. N. 263, and see *Re Liberator Society* (1893), 71 L. T. 496.

(*y*) See p. 240.

Gibbs and West's Case (1870), L. R. 10 Eq. 312.

After the winding-up petition the company wanted money at once, and borrowed £5000 from its bank, and gave the bank a charge for £5000 on the proceeds of a call made before winding up, which would be paid in a few days:—**Held**, the money was borrowed to prevent the cessation of the company. Therefore the court ought to allow the charge.

The liquidator can make contracts, but only so far as necessary for the beneficial winding up of the company. See p. 296.

(6) **As to proceedings against the company.—After the winding-up petition** is presented the court **may** stay any proceedings against the company (*z*).

The court will usually do so when the petition stands over with a view to a scheme of arrangement being adopted (*zz*).

After the winding-up order all proceedings against the company **must** cease, unless the court gives special leave for them to continue (*a*). And any distress or execution put in force against the assets of the company, unless completed before the commencement of the winding up, is void (*b*).

But the court will not, as a rule, interfere if the distress was levied before winding up, though not completed till afterwards, even though it be for rent in advance (*c*). If rent accrues after the winding up for the convenience of the winding up, the landlord will be allowed to distrain in full (*c*); for all costs incurred in the winding up are payable in full before the assets are distributed.

The liquidator may also become liable on some of the covenants in the lease (*d*).

(*z*) Companies Act, s. 172.
(*zz*) *Bowkett* v. *Fuller's United Electric Works*, [1913] 1 K. B. 160.
(*a*) Companies Act, s. 177. (*b*) *Ibid.*, s. 268.
(*c*) *Venner's Electrical Cooking and Heating Appliances, Ltd.* v. *Thorpe*, [1915] 2 Ch. 404.
(*d*) *Re Levi & Co., Ld.*, [1919] 1 Ch. 416.

The same rules apply to a winding up under supervision.

On a **voluntary winding up** the court **may**, and usually does (*dd*), restrain proceedings against the company.

Westbury v. Twigg, [1892] 1 Q. B. 77.

The plaintiff got judgment for a debt against the company on the same day as the voluntary winding up commenced. Next day the sheriff took possession in execution of the judgment:—**Held**, if on a compulsory winding up the execution would be stayed *ipso facto*, then the court has power to do so at any time before the sale.

(7) **As to costs.** If the company, while in liquidation, brings or defends an action and is ordered to pay costs, they are paid first out of the assets of the company (*e*). The same rule applies in a voluntary liquidation (*f*). The court also provides for the payment of the costs of the liquidation (*g*).

Unless otherwise ordered, the assets are (for the purpose of payment of costs and expenses) applied in the following order—

(1) Fees and actual expenses incurred in getting in and realising the assets.

(2) Costs of the petition.

(3) Remuneration of special manager.

(4) Costs of making the company's statement of affairs.

(5) Costs of shorthand writers appointed to take examinations.

(6) Other necessary disbursements by the liquidator.

(7) Costs of persons properly employed by the liquidator with the sanction of the court or the committee of inspection.

(8) Remuneration of the liquidator.

(9) Out of pocket expenses of the committee of inspection (*h*).

(*dd*) *Anglo-Baltic, etc., Bank* v. *Barker & Co.*, [1924] 2 K. B. 410.

(*e*) *Re Wenborn & Co.*, [1905] 1 Ch. 413.

(*f*) *Re Pacific Coast Syndicate*, [1913] 2 Ch. 26, and also in arbitrations, *Van den Hurk* v. *R. Martens & Co.*, [1920] 1 K. B. 850.

(*g*) Companies Act, s. 213.

(*h*) W. U. Rule (1909), 187.

CHAPTER XXIII.

LIQUIDATORS.

Section 1.

On a winding up by the court.

Appointment.—After the presentation of the petition the court **may** appoint the official receiver or any other person to be a provisional liquidator before the winding-up order is made (*a*).

As soon as the winding-up order is made the **official receiver becomes provisional liquidator** (*b*). The official receiver summons separate meetings of creditors and contributories to determine whether applications shall be made to the court.

(1) To appoint a liquidator.

(2) To appoint a **committee of inspection.**

Committee of inspection (*bb*).

The liquidator is in some matters (see p. 296) subject to the control of this committee, or, where no such committee is appointed, of the Board of Trade. The committee consists of creditors and contributories or their attorneys. The numbers of each are determined by agreement or by the court. The committee meets at least once a month, and the liquidator or any member may summon a meeting. The quorum is a majority of the committee. A member of the committee may

(*a*) Companies Act, s. 184. (*b*) *Ibid.*, s. 185.
(*bb*) *Ibid.*, s. 198.

resign or may be removed by an ordinary resolution at a meeting of creditors (if he represents creditors) or of contributories (if he represents them); he vacates office if he becomes bankrupt or is absent from five consecutive meetings without leave.

When a vacancy occurs, the liquidator must summon a meeting of creditors or contributories to fill the vacancy. If there is no committee, most of the powers of the committee devolve upon the Board of Trade, and may be exercised by the official receiver (*c*).

Special manager (*d*).

The official receiver while he is acting as liquidator may apply to the court to appoint a special manager, if he thinks that the business of the company or the interests of the creditors or contributories require it.

Such a manager has the powers of an ordinary receiver and manager, or such other powers as the court directs. He must give security, and his remuneration is fixed by the court.

He must account to the official receiver.

Shortly after the winding up has commenced **the court appoints a liquidator** (*e*), unless the liquidation is left in the hands of the official receiver.

If a liquidator is appointed, he must notify his appointment to the registrar, and give security not to make away with the assets, and he is not capable of acting as liquidator until this has been done (*f*). The official receiver must render an account of the liquidation to the liquidator (*g*).

A corporation cannot be appointed liquidator (*gg*). The liquidator should be an independent person; but

(*c*) W. U. Rule (1909), 205.
(*d*) Companies Act, s. 209.
(*e*) *Ibid.*, ss. 183 and 185 (3).
(*f*) *Ibid.*, s. 186.
(*g*) W. U. Rule (1909), 204.
(*gg*) Companies Act, s. 278.

the secretary of the company may be appointed, unless his conduct, or that of the directors, ought to be inquired into. The wishes of the creditors are regarded in the choice of the liquidator.

Re Association of Land Financiers (1878), 10 Ch. D. 269.

The company was wound up and W. was appointed liquidator. 250 unsecured creditors applied by motion that two creditors might be appointed instead of W. The order was made as asked.

An irregularity in the appointment of a liquidator does not invalidate any act done by him in good faith (*h*).

The liquidator is paid a salary, which is determined by the court. A liquidator may resign or may be removed by the court (*i*).

A contributory or a creditor can apply for his removal; but not an outside person (*j*). In case of any vacancy, the official receiver becomes the liquidator.

The liquidator takes into his custody all the property of the company. **The property does not vest in the liquidator** on his appointment; but the court may now make an order vesting all or any of the company's property in the liquidator (*k*). He is a trustee for all persons who were creditors of the company at the date of the winding up. (It is for this reason that the statute of limitations does not run after the winding

(*h*) W. U. Rule (1909), 217.
(*i*) Companies Act, s. 188 (1). *Re Karamelli & Barnett, Ld.*, [1917] 1 Ch. 203.
(*j*) *Re New de Kaap, Limited*, [1908] 1 Ch. 589.
(*k*) Companies Act, s. 190.

up has commenced.) The liquidator represents both the company and the creditors; he is in the position of a receiver and manager of partnership assets, and he must give the creditors and contributories every assistance in inspecting the books of the company, etc.

Powers of the liquidator (*l*).

(A) With the sanction of the court or of the committee of inspection :—

(1) To bring and defend actions in the name of the company.

If he brings an action in the name of the company, he does not become liable for costs; but if he brings it in his own name, he is personally liable, but has a right to be indemnified out of the assets of the company.

(2) To carry on the business of the company **so far as may be necessary for the beneficial winding up.**

Re Wreck Recovery Co. (1880), 15 Ch. D. 353.

The company was being wound up. L., one of the shareholders who believed in the value of the company's patents, made a contract with the liquidator whereby he was to have the use of the plant of the company to raise three sunken vessels at his own expense, the profits (if any) to go to the company :—**Held,** the contract was bad; as it was not for the purpose of beneficial winding up, but to resuscitate the company.

(3) To appoint a solicitor.

(4) To pay any class of creditors in full.

(5) To make compromises with creditors, debtors and contributories.

(B) Without such sanction :—

(1) To sell and transfer the property of the company.

(*l*) Companies Act, s. 191.

(2) To execute and seal documents and deeds on behalf of the company.

(3) To prove in the bankruptcy of any contributory.

(4) To draw bills of exchange and promissory notes: these will have the same effect as if drawn by the company in the course of its business.

(5) To raise money on the security of the assets.

(6) To take out in his own name letters of administration to any deceased contributory.

(7) To appoint an agent to do any business which he is unable to do himself.

(8) To do all things necessary for the winding up of the company and distributing the assets.

(9) **To summon meetings** of creditors and contributories.

He may summon meetings at any time when he desires to ascertain the wishes of creditors or contributories (*m*); and he is bound to have regard to their wishes when ascertained.

He must summon meetings at any times fixed by the creditors or contributories in their meetings, or when requested in writing by one-tenth in value of the creditors or contributories (*m*).

The exercise of all these powers is subject to the control of the court.

Also, by the Winding-up Rules, 1909, the liquidator may exercise the following powers, which by the Companies Acts are assigned to the court:

(1) **Fix a date by which creditors must prove their claims** or be debarred from all remedy against the company;

(2) **Settle the lists of contributories** (*n*).

(*m*) Companies Act, s. 192. (*n*) *Ibid.*, s. 203.

There are two lists, the "A. list," or list of persons liable to contribute as present members, and the "B. list" of persons who have ceased to be members within a year of the winding up. See p. 279, above. Each list distinguishes between those who are liable personally and those who are liable as personal representatives, etc.

The liquidator is entitled and is bound to get particulars of all contracts for the allotment of shares otherwise than for cash delivered to the registrar (*Re X. Co.*, [1907] 2 Ch. 92).

The list of contributories is *primâ facie* evidence.

(3) **To make calls** on the contributories for the purpose of paying the debts of the company and for adjusting the rights of the contributories *inter se* (*o*).

An immediate call may be made, though by the terms of allotment the calls are only payable by instalments; for the statutory right of the liquidator to make calls takes the place of the company's right to make calls under its agreement (*Fowler* v. *Broad's Night Light Co.*, [1893] 1 Ch. 724).

Any order made by the court as to calls is conclusive.

Before the Act of 1929 it was only *primâ facie* evidence against the real estate of a deceased contributory unless the heir or devisee was on the list of contributories (*p*).

The liquidator may now, with leave of the court, **disclaim** land subject to burdensome covenants, shares, unprofitable contracts, or other **property which is subject to liabilities.** This must be done within twelve months from the commencement of the winding up, unless the court extends the time (*q*).

(*o*) See *Wakefield Rolling Stock Co.*, on p. 281.
(*p*) Companies Act, 1908, s. 168.
(*q*) *Ibid.*, s. 267.

Duties of liquidator.—His principal duty is to get in the property and pay the debts, and distribute any balance among the contributories (*r*). He may be liable for negligence if he distributes all the property, and allows the company to be dissolved without paying the creditors (*r*), or if he pays the wrong persons by mistake (*s*), and in this case he is not protected by the Trustee Act, 1925 (*s*); but he can always protect himself by obtaining the directions of the court, and this should be done in every case of doubt, or where large sums are involved.

SPECIAL NOTE.

On the Powers and Duties of Liquidators.

(This note is intended for the use of accountants and others specially interested in the position and duties of liquidators.)

On a winding up by the court.

The liquidator is under the control and supervision of the Board of Trade.

The duties of liquidators are defined partly by the Companies Act, but chiefly by the Companies (winding up) Rules, which also prescribe forms which must be followed so far as circumstances will allow.

Notice of Appointment.

The liquidator must give notice of his appointment to the registrar and give security before he can act (*t*).

Settling List of Contributories.

The liquidator as soon as possible after his appointment appoints a time and place for settling the list, and gives notice in writing of the time and place to every person whom he intends to include in the list.

(*r*) *Pulsford* v. *Devenish*, [1903] 2 Ch. 625.
(*s*) *Windsor Steam Coal Co.*, [1928] Ch. 609; [1929] 1 Ch 151.
(*t*) Companies Act, s. 186.

On the day so appointed the liquidator hears any persons who object to being put on the list, and then finally settles the list. He then gives notice to every person on the list, informing him that any application to vary the list must be made to the Court by summons within twenty-one days. The Court may vary the list or may extend the time for application to vary the list, and the liquidator may himself add to or vary the list.

The list shows the address and number of shares of each contributory, distinguishing the classes of shareholders and showing whether they hold in a representative capacity. The notice should show in what capacity each person is put on the list and for what number of shares (*u*).

The B. list is not settled until it has been shown that the present members are unable to satisfy the debts (*v*).

Calls.

If the liquidator desires to make a call:

(1) If there is no committee of inspection, he must get the leave of the court by summons, which must be served on every contributory at least four days before the call is made.

(2) If there is a committee, he should summon a meeting of the committee for the purpose of obtaining their sanction.

Notice of the meeting must be given in time to reach each member of the committee not less than seven days before the meeting, and must state the proposed amount of the call and the purpose for which it is to be made.

The notice must also be advertised.

Any statements or representations made by contributories to the committee or liquidator must be considered before the call is sanctioned.

The majority of the committee may sanction the call.

The liquidator must file with the registrar the document making the call, and must serve on each contributory a copy of the resolution of the committee or order of the court with a notice stating the amount or balance due from him in respect of the call.

The call may be enforced by an order.

(*u*) W. U. Rules (1909), 77 to 82.
(*v*) Buckley, 10th ed., p. 296.

Admission and rejection of Proofs (*w*).

The liquidator fixes a date not less than fourteen days from the date of the notice on or before which the creditors must prove their debts or be excluded, and the liquidator must advertise the date so fixed and give notice of it to every person who appears in the statement of affairs to be a creditor or who to the liquidator's knowledge claims to be a creditor, and whose claim has not been admitted.

The debts must be proved by affidavit verified by production of vouchers, if required, and stating whether the creditor is a secured creditor or not (*x*).

Trade discounts must be deducted, but discounts not exceeding 5 per cent. agreed to be allowed for payment in cash need not be deducted.

Rent or other payments falling due at stated periods may be apportioned.

Future debts may be proved for with a deduction of a rebate at the rate of 5 per cent. per annum.

Where there are numerous claims as for wages to workmen, they can be proved for by one affidavit with a schedule.

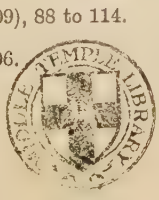
The liquidator must examine every proof and must within twenty-eight days (*y*) either admit it in writing, or reject it in writing, stating his grounds, or require further evidence.

If he has given notice of intention to declare a dividend, his decision must be notified within fourteen days after the last date for lodging proofs (*z*).

A creditor can appeal to the court against the rejection of a proof, on giving notice within twenty-one days of rejection, and the liquidator, or in default, any creditor or contributory, can apply to the court to expunge a proof after it has been admitted, or to reduce its amount (*a*).

The liquidator on the first day of each month must file a list of proofs received during the month, showing whether they are accepted or rejected or stand over, and when a creditor gives notice of intention to appeal against the rejection of a proof the liquidator must file the proof within three days (*aa*).

(*w*) W. U. Rules (1909), 88 to 114.
(*x*) *Ibid.*, 92.
(*y*) *Ibid.*, 113.
(*z*) *Ibid.*, 113.
(*a*) *Ibid.*, 104, 105, 106.
(*aa*) *Ibid.*, 110, 111.



Dividends (*b*).

The liquidator must give not more than two months' notice to the Board of Trade of his intention to declare a dividend, and must give notice to all creditors mentioned in the statement of affairs who have not proved their debts, fixing a date (not less than fourteen days from the notice) up to which proofs may be lodged. If after this date a creditor wishes to appeal against the rejection of his proof, he must give notice within seven days, and the liquidator may set aside a sufficient sum to provide for the dividend on this debt, if proved, and the cost of proof.

The liquidator excludes from the dividend all proofs which have been rejected where no notice of appeal has been given within the specified time.

If the dividend has to be postponed for more than two months, fresh notice must be given to the Board of Trade, but no new notice need be given to creditors who have not proved.

When the dividend is declared, the liquidator transmits to the Board of Trade a list of the proofs filed with the registrar.

Where a dividend is to be returned to contributories the liquidator must prepare a list of the persons to whom it is to be paid, and the amounts payable to each, and this is appended as a schedule to the order authorising him to make the return (*c*).

If too much is paid to the shareholders, they may be ordered to refund the amount (*d*).

Security.

The Board of Trade directs what security shall be given and how. When security is given, a certificate of the Board is filed with the registrar.

The liquidator pays the costs of giving security, including premiums to guarantee societies, and is not entitled to have this refunded out of the assets (*e*).

If the liquidator fails to give security, the court may rescind the order appointing him, and if he fails to keep up his security, he may be removed. The same proceedings will then be taken as on the first appointment of a liquidator (*f*).

Remuneration.

The liquidator's remuneration (unless the court otherwise orders)

(*b*) W. U. Rule (1909), 150. (*c*) *Ibid.*, 151.
(*d*) *Re Birkbeck Building Society*, [1915] 1 Ch. 91.
(*e*) W. U. Rule (1909), 57. (*f*) *Ibid.*, 58.

is fixed by the committee of inspection. It consists of a commission partly on the amount realised (less sums paid out of their securities to secured creditors other than debenture holders) and partly on the dividends distributed.

The Board of Trade may apply to the court to reduce the remuneration.

If there is no committee, the scale of fees payable on realisation and distribution by the official receiver applies (*g*).

The liquidator must not receive any further remuneration or gift from any person connected with the company, nor must he share his remuneration with any such person (*h*).

A member of the committee of inspection must not without the sanction of the court receive any remuneration or make any profit, directly or indirectly, out of the liquidation (*i*).

Payment of Moneys (*j*).

Moneys received by the liquidator must be paid into the Companies Liquidation Account at the Bank of England as directed by the Board of Trade, unless the committee of inspection satisfy the Board of Trade that for the purpose of carrying on the company's business or obtaining advances it would be an advantage for him to have an account at some other bank, in which case the Board may authorise payment of the moneys to his account as liquidator of the company at some other bank selected by the committee for such time as the Board shall direct, or until they order the account to be closed. All payments out of such an account must be by cheque, bearing the name of the company and signed by the liquidator and countersigned by at least one of the committee of inspection, and by any other person appointed by the committee.

The liquidator must not retain in his hands sums over £50 for more than ten days unless authorised to retain more by the Board of Trade. If he does, he is liable

(i) to pay interest on the sums retained at 20 °/₀ per annum,
(ii) to disallowance of his remuneration by the Board,
(iii) to dismissal,
(iv) to refund expenses occasioned by his default.

(*g*) W. U. Rule (1909), 154. (*h*) *Ibid.*, 155.
(*i*) *Ibid.*, Rules 158, 160.
(*j*) Companies Act, s. 194; W. U. Rules (1909), 164, 165.

He must not pay any moneys into his private banking account.

The court may order moneys due to the company to be paid into the liquidator's account at the Bank of England (*k*); and all moneys representing unclaimed or undistributed assets which have remained unclaimed or undistributed for six months must be paid into the same account (*l*). Any such moneys remaining in his hands on the dissolution of the company must be paid in at once (*m*).

Meetings of Creditors and Contributories.

No meetings of the company as such are held during a winding up by the court.

The first meetings of creditors and contributories are summoned by the official receiver within twenty-one days (or, if a special manager has been appointed, within one month) after the winding-up order (*n*).

The notice to creditors states the time within which they must lodge their proofs in order to be entitled to vote at the first meeting (*o*).

The official receiver also gives notice of these meetings to the directors, and may require them to attend, and sends to each creditor and contributory a summary of the company's statement of affairs showing the causes of failure, etc.

In addition:—

The liquidator may also summon meetings of creditors and contributories for the purpose of ascertaining their wishes (*p*).

The liquidator must summon meetings—

(a) when requested in writing by one-tenth in value (see p. 297),

(b) to fill vacancies in the committee of inspection (*q*).

The liquidator summons such meetings by seven days' notice in the *Gazette* and one local paper, and by sending notice by post to every person appearing by the company's books to be a creditor or contributory as the case may be (*r*).

(*k*) Companies Acts, s. 207.
(*l*) *Ibid.*, s. 285.
(*m*) W. U. Rule (1909), 191.
(*n*) *Ibid.*, Rules 115, 116.
(*o*) *Ibid.*, Rule 118.
(*p*) Companies Act, s. 192; W. U. Rule (1909) 121.
(*q*) Companies Act, s. 199.
(*r*) W. U. Rule (1909) 123.

The meetings should be held at the place most convenient to the majority of the creditors or contributories, and the meetings of each may be held at different times and places (*s*).

Where a meeting is summoned by the liquidator, he, or someone nominated by him, is chairman (*t*).

Resolutions are passed by a majority in number and value, present in person or by proxy. The value in case of contributories is determined by their voting power under the articles (*u*).

Where a majority in number vote one way and a majority in value vote the other, *e.g.* on a question whether the official receiver shall act as liquidator, the court must decide (*x*).

The liquidator must file with the Registrar a copy of every resolution passed (*y*).

The quorum at each meeting is three.

If the quorum is not present within half an hour, the meeting must be adjourned to the same date in the following week, unless the chairman appoints some other date not less than seven or more than twenty-one days after the meeting.

A creditor cannot vote unless he has lodged a proof within a specified time and his proof has been admitted. He cannot vote in respect of unascertained debts, and in case of secured debts he must surrender his security, or value it, and only vote in respect of the balance (*z*).

The chairman can admit or reject a proof for the purpose of voting, or may allow the creditor to vote subject to the vote being declared invalid (*a*).

Proxies may be used at meetings. They must be in the specified form (*b*). The liquidator may be appointed a proxy. He must not solicit proxies for his own appointment (*c*).

Advertisements, Notices, and Reports.

The liquidator must immediately advertise his appointment and the appointment of the committee of inspection, and must

(*s*) W. U. Rule (1909), 125.
(*t*) *Ibid.*, Rule 127.
(*u*) *Ibid.*, Rule 128.
(*x*) Cf. *Re Bloxwich Iron & Steel Co.*, [1894] W. N. 111.
(*y*) W. U. Rule (1909), 129.
(*z*) *Ibid.*, Rule 135.
(*a*) *Ibid.*, Rule 137.
(*b*) Forms 80 and 81 in appendix to Rules of 1909.
(*c*) *Ibid.*, Rules 139–149.

pay the expense of gazetting the notice of his appointment (*d*). Whenever any proceedings are advertised in the *Gazette*, the liquidator must file a memorandum referring to and giving the date of the advertisement. He must keep a copy of every local paper containing an advertisement relating to the liquidation, and must file a memorandum referring to it (*e*).

If the liquidation is not concluded within one year, the liquidator must send to the registrar within thirty days after the expiration of the first year of the liquidation, and subsequently at intervals of half a year, a statement in form 92 in the Rules as to the proceedings and position of the liquidation, commencing from the date of his appointment and brought down to the end of one year from the commencement of the winding up.

The statement must be made in duplicate, and is open to the inspection of creditors or contributories on payment of a fee.

It must be verified by affidavit. If he has not received or paid anything, he must still send in the statement with an affidavit of no receipts (*f*).

The liquidator must report to the registrar the order for dissolution of the company (*g*).

Accounts (*h*).

A liquidator at the end of six months from the winding-up order, and at the end of every subsequent six months, must send his accounts to the Board of Trade. They must be kept in duplicate in a cash book in a special form prescribed by the Board, and must be verified by affidavit. He must also send such vouchers and information as the Board requires for the purposes of audit. Two copies are filed, and the account is printed and sent by the Board to every creditor and contributory.

He must send with the first account a summary of the company's affairs showing the amounts realised, and at the end of every six months a report upon the position of the liquidation.

(*d*) W. U. Rule (1909), 55. (*e*) *Ibid.*, Rule 210.
(*f*) Companies Act, s. 284 (penalty £50 a day); W. U. Rules (1909) 189–190.
(*g*) Companies Act, s. 221 (penalty £5 a day).
(*h*) *Ibid.*, s. 195, and W. U. Rules (1909) 169, 170.

When the assets are fully realised, he must send in his account forthwith.

He must also send a summary with sufficient printed copies to be sent to all the creditors and contributories.

If the liquidator carries on the company's business, he must keep a distinct trading account and incorporate the weekly totals in the cash book. The trading account must be verified by affidavit at least once a month, and submitted to the committee of inspection to be examined and certified.

The Board keeps an account of the receipts and payments of every company in liquidation.

The committee of inspection may request that balances not required for the time being may be invested.

If the balance exceeds £2000, the liquidator may give notice that it is not required, and the company then becomes entitled to interest at 2 °/₀ per annum (*i*).

Books and Papers.

A liquidator must keep (*k*) a "Record Book" of minutes of meetings and resolutions of the meetings of creditors and contributories and of the committee of inspection, and other matters necessary to give a true view of his administration. But he need not enter any confidential document, such as opinions of counsel. He must also keep a "cash book" in a form directed by the Board of Trade and enter his receipts and payments.

These books are open to the inspection of creditors and contributories, but they are not entitled to inspect the books and papers of the company except under an order of the court (*l*).

The liquidator must submit the record book and cash book, with vouchers, &c., to the committee of inspection (if any) when required, and not less than once every three months, for audit.

If any books, papers or other assets of the company are in the hands of any shareholder, agent or officer of the company, the liquidator can apply to the court for an order that they be delivered up to him (*m*).

(*i*) Companies Act, s. 302.
(*k*) *Ibid.*, s. 193, and W. U. Rules (1909) 166 and 167.
(*l*) *Ibid.*, s. 212.
(*m*) *Ibid.*, s. 204.

When the company is about to be dissolved, the books and papers of the company and of the liquidator may be disposed of as the court directs, and after five years from the dissolution the responsibility of the liquidator or any person to whose custody they have been committed ceases (*n*).

The Board of Trade may at any time on the application of the liquidator direct that any books and papers no longer required for the purposes of the liquidation may be sold or destroyed (*o*).

Release.

The liquidator is under a statutory liability, on which he may at any time be sued by creditors or contributories, until he has obtained his release.

He can apply for his release to the Board of Trade if

(1) he has realised all the property of the company or so much as can be realised without needlessly protracting the liquidation, and has distributed a final dividend to the creditors and adjusted the rights of the contributories and made a final return; or

(2) he has resigned; or,

(3) he has been removed from his office.

He applies to the Board for a report on his accounts.

Before applying for his release, he must give notice of his intention to all the creditors who have proved, and to all the contributories, and send them a summary of his receipts and payments (*p*).

Any creditor or contributory may object to the release, and the Board grants or withholds it as it thinks fit. The Board's decision is subject to appeal to the court, and the court may charge the liquidator with the consequence of any default on his part.

The release when granted discharges the liquidator from all liability in respect of his conduct as liquidator, and can only be set aside on proof of fraud or concealment of material facts (*q*). The order granting a release must be gazetted. If a liquidator dies or resigns after his release, no new

(*n*) Companies Act, s. 283.
(*o*) Winding-up Rule (1909), 175 (2).
(*p*) W. U. Rule (1909), 197. (*q*) Companies Act, sect. 197.

liquidator is appointed, but the official receiver remains liquidator (*r*).

Resignation (*s*).

If a liquidator desires to resign, he must summon separate meetings of the creditors and contributories. If they both by ordinary resolution agree to accept his resignation, he files with the registrar a memorandum of his resignation, and sends notice to the Official Receiver and his resignation thereupon takes effect In any other case he must report the result of the meetings to the court and to the Official Receiver, and the court determines whether his resignation shall be accepted.

When a liquidator resigns or is removed, he must hand over to the Official Receiver or the new liquidator all his books and the books, papers and accounts of the company, and his release cannot take effect until he has done this (*t*).

Removal.

A liquidator can be removed

1. By the Court
   - (a) for failing to keep up his security (see p. 294).
   - (b) for any due cause (s. 188) (*u*).
2. By the Board of Trade
   - (a) For retaining balances of more than £50 for more than ten days (*x*).
   - (b) The Board may, on complaint of a creditor or contributory, take such action as they think fit, if the liquidator does not faithfully perform his duties (*y*).
3. On Bankruptcy.

If a receiving order is made against a liquidator, he is thereupon deemed to have been removed (*z*).

(*r*) W. U. Rule (1909), 55.
(*s*) W. U. Rule (1909), 162.
(*t*) W. U. Rule (1909), 175.
(*u*) *E.g.* where he insists on acting in the interests of the shareholders alone, though the assets are insufficient to pay the creditors in full. *Re Rubber and Produce Trust*, [1915] 1 Ch. 382.
(*x*) Companies Act, s. 194.
(*y*) *Ibid.*, s. 196.
(*z*) W. U. Rule (1909), 163.

SECTION 2.

On a Voluntary Winding up.

Appointment.

(1) In case of a **"members' voluntary winding up"** (see p. 268, *ante*).

The company in general meeting makes the appointment (*zz*).

A special resolution is not necessary, nor need special notice be given of the intention to appoint liquidators.

Re Trench Tubeless Tyre Co., [1900] 1 Ch. 408.

Notices were sent out of a meeting to confirm a resolution to wind up and to appoint W. as liquidator. At the meeting M. was appointed:—**Held**, the appointment was good, as no notice was needed.

If a vacancy occurs in the office of liquidator, a general meeting of the company may be convened by any contributory to fill the vacancy (*a*).

(2) In case of a **"creditors' voluntary winding up"** (see p. 269, *ante*).

The meetings of members and creditors called by the company (see pp. 269, 270, *ante*) may each nominate a liquidator. In case of difference, the liquidator appointed by the creditors is the liquidator, subject to an application to the court (*b*).

The court may remove a liquidator for due cause (*c*) and appoint another, or may appoint an additional liquidator (*d*).

(*zz*) Companies Act, s. 232.
(*a*) Companies Act, s. 233. (*b*) *Ibid.*, s. 239.
(*c*) *Ibid.*, s. 249.
(*d*) *Re Sunlight Incandescent Co.*, [1900] 2 Ch. 728.

If the appointment of the liquidator is defective, he cannot sue for his remuneration; but if the company or the new liquidator take advantage of his services, he can claim reasonable payment (*e*).

A liquidator in a voluntary winding up is not subject to the control of the Board of Trade to such an extent as a liquidator in a compulsory winding up; but he is bound to furnish to the Board accounts and particulars of moneys in his hands if directed so to do by the Board; and the Board may audit his accounts (*f*).

If there are several liquidators, their powers may be exercised by any one or more of them as determined at the time of their appointment, or otherwise by any two or more of them (*g*).

Bolognesi's Case (1870), L. R. 5 Ch. App. 567.

After winding up, a director, who was also one of the four liquidators, accepted a bill of exchange. No authority had been given for one liquidator to act alone:—**Held**, the company was not bound to pay.

POWERS OF LIQUIDATORS ON VOLUNTARY WINDING UP.

The liquidator may—

A. **Without the sanction of the court:**

(1) Exercise all the powers given by the Act to a liquidator appointed by the court except those mentioned under head B. (*h*).

(2) Settle the list of contributories.

(3) Make calls (*h*).

(*e*) *Re Allison*, [1904] 2 K. B. 327.
(*f*) W. U. Rules (1909), 192, 193.
(*g*) Companies Act, s. 248.
(*h*) *Ibid.*, s. 248, and see p. 296.

(4) Call meetings of the company.

B. **With the sanction of an extraordinary resolution of the Company** (**and**, in the case of a creditors' voluntary winding up, of the **court or the committee of inspection**) :

(1) Pay any classes of creditors in full.

(2) Compromise with creditors.

(3) Compromise calls, liabilities, debts, and claims between the Company and contributories and other debtors (*i*).

C. **With the sanction of a special resolution,**

Sell the assets of the company for shares on a reconstruction under Sect. 234. See p. 315.

Special Note on the Rights and Duties of Liquidators in a Voluntary Winding up.

(This note is intended for accountants and others specially interested in the position of liquidators.)

Notice of Appointment.

The liquidator must within twenty-one days after his appointment deliver to the Registrar a notice of his appointment in the form prescribed by the Board of Trade (*j*).

MEETINGS.

"First Meeting of Creditors."

This meeting is not now called by the liquidator. Sect. 188 of the Act of 1908 is repealed, and the procedure now depends upon whether the winding up is a "members'" or a "creditors' voluntary winding up," see pp. 268, 269, *ante*.

(*i*) Companies Act, s. 248.
(*j*) *Ibid.*, s. 250. Penalty £5 a day.

General Meetings of the Company.

See pp. 268, 269, *ante*.

Final Meeting.

See pp. 269, 270, *ante*.

Remuneration.

This may be fixed by the company in general meeting, either at the time of his appointment or later, or by the court. Sometimes the liquidator takes such remuneration as he considers proper, and then at the final meeting (*k*) his accounts are passed, including the appropriation of his remuneration. Any creditor or contributory may apply to the court to revise any decision as to remuneration. The remuneration is payable, with the other costs of liquidation, out of the assets of the company in priority to all other claims (*l*).

Proof of Debts.

The rules as to receiving proofs of debts are the same as in the case of a winding up by the court, except

(1) no notice of the date fixed need be given to persons claiming to be creditors,

(2) no time is fixed within which the acceptance or rejection of a proof need be notified, and

(3) proofs need not be filed (*m*).

Calls.

The liquidator usually gives the same notices to the contributories as on a winding up by the court, but he is not bound to do so (*n*).

Statements to the Registrar.

In case the liquidation continues for more than a year, the liquidator must make the same statements to the Registrar as in a compulsory liquidation (*o*). See p. 306.

(*k*) See pp. 269, 270, *ante*. (*l*) Companies Act, s. 254.
(*m*) W. U. Rules (1909), 107, 110, 111, 113.
(*n*) Buckley, 10th ed., p. 434. (*o*) Companies Act, s. 284.

Payments of Moneys.

A liquidator in a voluntary liquidation is not bound to pay his balances into the company's liquidation account at the Bank of England; but he is bound to pay in any moneys representing unclaimed or undistributed assets which have been in his hands for more than six months, as in the case of a compulsory liquidation. And on dissolution of the company he must pay in all moneys representing unclaimed or undistributed assets or dividends (*p*).

Books and Papers.

When the company is about to be dissolved, the books and papers may be disposed of as the company by extraordinary resolution directs. The responsibility of the liquidator for the books and papers ceases after five years from the dissolution.

SECTION 3.

Winding up under Supervision.

The court may appoint a liquidator in addition to the liquidator already appointed by the company, and he has the same powers as if he had been appointed by the company.

The court may remove any liquidator, whether appointed by the company and continued by the court or appointed by the court, and any vacancy may be filled by the court (*q*).

As to the powers of a liquidator under a supervision order, see Chapter XXI.

(*p*) W. U. Rule (1909), 191. (*q*) Companies Act, s. 259.

CHAPTER XXIV.

RECONSTRUCTION.

RECONSTRUCTION occurs when a company transfers the whole of its undertaking and property to a new company, under an arrangement by which the shareholders of the old company are entitled to receive some shares or other similar interests in the new company.

This can be done in four ways—

(1) A sale by the company of the whole of its undertaking to a new company, under the powers contained in the Memorandum of Association.

(2) A sale by the liquidator of the company under s. 234.

(3) A scheme of arrangement under s. 153.

(4) A sale by all, or a large proportion, of the shareholders of their shares to a new company.

1. A **sale under the memorandum** can be effected where the company does not require further capital from its shareholders, and where it is not necessary to make the winding up of the old company a necessary part of the arrangement. The old company sells its undertaking to the new company for shares in the new company, and after the transaction is complete, the old company is wound up and the shares of the new company distributed among its members according to their rights.

2. A sale under s. 234 is necessary when a company needs more capital and cannot get it without putting some pressure on the existing shareholders. To do this a new company is formed, and the old company, by its liquidator, sells its undertaking to the new company in return for shares in the new company, in such a way that each shareholder in the old company is entitled to one or more shares in the new. But whereas the shares in the old company were fully paid, those in the new company are only partly paid, so that each shareholder must either undertake a fresh liability for calls or give up his shares.

This can only be carried out under the provisions of s. 234 (z), which provides an ample safeguard for the rights of shareholders who dissent from the scheme, provided they notify their dissent in the proper way.

By section 234.—If a company is being or is **proposed to be wound up** altogether voluntarily, and its property is proposed to be transferred or sold to another company, the liquidators of the first company may, **with the sanction of a special resolution,** receive in compensation shares, etc., in the other company to distribute among the members of the first company. This shall be binding on the members of the first company. **But if any member** who has not voted for the special resolution **expresses his dissent** in writing, addressed to the liquidator and left at the registered office of the company within seven days after the confirmation of the resolution, **he may require the liquidator** either—

(z) Or in the case of a creditors' voluntary winding up, under s. 243, with the sanction of the court or the committee of inspection.

(1) To abstain from carrying the resolution into effect; or

(2) **to purchase his interest** at a price to be determined by agreement or in default by arbitration.

The money must be paid before the company is dissolved.

If within a year an order is made for winding up by the court or under supervision, **the resolution becomes void** unless sanctioned by the court (*a*).

Thus, the parties to such an arrangement can never be sure that it will ultimately be valid and binding, and the difficulty cannot be got over by applying to the court for its sanction, unless a winding-up order has been made. The only way to make the arrangement certain is to apply to the court for an order for winding up under supervision, and when the order is made, to apply that the arrangement may be sanctioned. This was done in *Re New Flagstaff Co.*, W. N. (1889) 123.

If a shareholder does not dissent in the manner provided by the Act within seven days, he loses his rights in the old company.

The notice of dissent must comply in all material respects with the provisions of the Statute.

Union Bank of Kingston upon Hull (1880), 13 Ch. D. 808.

Held, that the notice of dissent must contain express notice to the liquidator to abstain from carrying the resolution into effect or to purchase the shares (*b*).

But an informality which is merely technical may be waived by the liquidator.

(*a*) A contributory may petition to wind up the company for the purpose of defeating such a scheme under this provision (*Consolidated South Rand Mines*, [1909] 1 Ch. 491).

(*b*) Followed *Re Demerara Rubber Co.*, [1913] 1 Ch. 331.

Brailey v. Rhodesia Consolidated, Limited, [1910] 2 Ch. 95.

The registered office of the company was in Rhodesia. B., a shareholder, sent his notice of dissent to the liquidator in London. The liquidator acknowledged the receipt of the notice and took no objection to its form for more than three weeks:—**Held,** the notice was sufficient.

The executors of a deceased shareholder have a right to dissent (*c*).

If there are many dissentient shareholders who give notice of dissent within the proper time and in the proper manner, it becomes very difficult for a company to be reconstructed, for each dissentient shareholder thereby becomes entitled to the value of his share in the company, and this is determined, not by the market value of the share, but by the value of an aliquot part of the whole assets of the company, to be determined, if necessary, by arbitration. Hence companies have frequently tried to evade the Act.

A company cannot deprive its shareholders of their rights as dissentients under this section either directly or indirectly, for—

(1) **Any provision in the Articles depriving members of their rights under this section is void.**

Payne v. Cork Co., [1900] 1 Ch. 308.

The Articles gave the liquidator power on a winding up of the company to sell the undertaking for shares in another company with the sanction of a special resolution, and provided that, notwithstanding section 234 (then section 161 of the Act of 1862), the shareholders should not have power to require him to buy their shares:—**Held,** the Article is bad.

(2) Schemes by which a company sells its undertaking under a power to do so contained in the Memorandum, and provides for the distribution among its members of the shares or other consideration to be

(*c*) *Llewellyn* v. *Kasintoe Co.*, [1914] 2 Ch. 670.

received from the new company, are void unless they make proper provision for the rights of dissentient shareholders (*d*).

Bisgood v. Hendersons Transvaal Limited, [1908] 1 Ch. 743.

The company by special resolution approved a scheme for the sale (under a power in its Memorandum) of all its undertaking to a new company for shares in the new company of £1 each credited as paid up to the extent of 17*s.* 6*d.* per share only. The shares in the new company were to be distributed among the shareholders in the old company. If any shareholders did not approve, the shares to which they were entitled were to be sold and they were to be paid their proportion of the purchase price:—**Held,** the scheme was *ultra vires* and void (*e*).

A company can now sell its assets under s. 234 to a foreign company (*f*).

3. When a reconstruction is carried out as a **scheme of arrangement** under s. 153 (see p. 273, *ante*), the court may require the rights of dissentient shareholders to be properly protected under s. 234 (*g*).

When a reconstruction or amalgamation is carried out under this section, the court may make an order vesting the property of the old company in the new company, and providing for the appropriation to the members of the old company of shares, etc., in the new company, and providing for the dissolution of the old company without winding up (*i*).

(*d*) As to the rights of the shareholders to set aside the transaction after it has been completed, see *Clinch* v. *Financial Corporation*, L. R. 4 Ch. 118.

(*e*) Followed *Etheridge* v. *Central Uruguay Ry.*, [1913] 1 Ch. 425.

(*f*) Companies Act, s. 234 (1).

(*g*) *General Motor Cab Co.*, [1913] 1 Ch. 377. *Re Sandwell Park Colliery*, [1914] 1 Ch. 589.

(*i*) Companies Act, s. 154.

4. Where the reconstruction is carried out by a sale by the members of their shares, then if the holders of nine-tenths in value of the shares have approved the scheme, the company can serve notice on the dissentients that it desires to purchase their shares on the terms of the scheme, and these shares will be acquired by the company accordingly, unless the court otherwise orders (*j*).

A dissenting shareholder can apply to the court within one month after the notice is given by the company (*j*).

Where the undertaking of the company is transferred under methods (1), (2), or (3), **no compensation** can be received by the directors **for loss of office**, unless the amount is disclosed to the shareholders and sanctioned by them. Where method No. (4) is adopted, the amount of any proposed payment to the directors must be stated in the notice sent to the shareholders (*k*).

(*j*) Companies Act, s. 155.
(*k*) *Ibid.*, s. 150.

APPENDIX A.

COMPANIES ACT, 1929.

Section 108. *Annual return to be made by company having a share capital.*—(1) Every company having a share capital shall once at least in every year make a return containing a list of all persons who, on the fourteenth day after the first or only ordinary general meeting in the year, are members of the company, and of all persons who have ceased to be members since the date of the last return or, in the case of the first return, of the incorporation of the company.

(2) The list must state the names, addresses, and occupations of all the past and present members therein mentioned, and the number of shares held by each of the existing members at the date of the return, specifying shares transferred since the date of the last return or, in the case of the first return, of the incorporation of the company by persons who are still members and have ceased to be members respectively and the dates of registration of the transfers, and, if the names therein are not arranged in alphabetical order, must have annexed to it an index sufficient to enable the name of any person in the list to be readily found:

Provided that, where the company has converted any of its shares into stock and given notice of the conversion to the registrar of companies, the list must state the amount of stock held by each of the existing members instead of the amount of shares and the particulars relating to shares hereinbefore required.

(3) The return must also state the address of the registered

office of the company and must contain a summary distinguishing between shares issued for cash and shares issued as fully or partly paid up otherwise than in cash, and specifying the following particulars :—

(*a*) The amount of the share capital of the company, and the number of the shares into which it is divided ;

(*b*) The number of shares taken from the commencement of the company up to the date of the return ;

(*c*) The amount called up on each share ;

(*d*) The total amount of calls received ;

(*e*) The total amount of calls unpaid ;

(*f*) The total amount of the sums, if any, paid by way of commission in respect of any shares or debentures ;

(*g*) Particulars of the discount allowed on the issue of any shares issued at a discount, or of so much of that discount as has not been written off at the date on which the return is made ;

(*h*) The total amount of the sums, if any, allowed by way of discount in respect of any debentures since the date of the last return ;

(*i*) The total number of shares forfeited ;

(*k*) The total amount of shares for which share warrants are outstanding at the date of the return ;

(*l*) The total amount of share warrants issued and surrendered respectively since the date of the last return ;

(*m*) The number of shares comprised in each share warrant ;

(*n*) All such particulars with respect to the persons who at the date of the return are the directors of the company as are by this Act required to be contained with respect to directors in the register of the directors of a company ;

(*o*) The total amount of the indebtedness of the company in respect of all mortgages and charges which are required (or, in the case of a company registered in Scotland, which, if the company had been registered in England, would be required) to be registered with the registrar of companies under this Act, or which would have been required so to be registered if created after the first day of July, nineteen hundred and eight.

(4) The return shall be in accordance with the form set out in the Sixth Schedule to this Act, or as near thereto as circumstances admit.

(5) In the case of a company keeping a dominion register, the particulars of the entries in that register shall, so far as they relate to matters which are required to be stated in the return, be included in the return made next after copies of those entries are recieved at the registered office of the company.

Section 110. *General provisions as to annual returns.*— (1) The annual return must be contained in a separate part of the register of members, and must be completed within twenty-eight days after the first or only general meeting in the year, and the company must forthwith forward to the registrar of companies a copy signed by a director or by the manager or by the secretary of the company.

(2) Section ninety-eight of this Act shall apply to annual returns as it applies to the register of members.

(3) Except where the company is a private company, or is an assurance company which has complied with the provisions of subsection (4) of section seven of the Assurance Companies Act, 1909, the annual return shall include a written copy, certified by a director or the manager

or secretary of the company to be a true copy, of the last balance sheet which has been audited by the company's auditors, including every document required by law to be annexed thereto, together with a copy of the report of the auditors thereon certified as aforesaid, and if any such balance sheet is in a foreign language there shall also be annexed to it a translation thereof in English, certified in the prescribed manner to be a correct translation :

Provided that, if the said last balance sheet did not comply with the requirements of the law as in force at the date of the audit with respect to the form of balance sheets there shall be made such additions to and corrections in the said copy as would have been required to be made in the said balance sheet in order to make it comply with the said requirements, and the fact that the said copy has been so amended shall be stated thereon.

(4) If a company fails to comply with this section or either of the two last foregoing sections of this Act, the company and every officer of the company who is in default shall be liable to a default fine.

(5) For the purposes of subsection (4) of this section the expression "officer," and for the purposes of the last two foregoing sections of this Act the expression "director," shall include any person in accordance with whose directions or instructions the directors of the company are accustomed to act.

FOURTH SCHEDULE.

Part I.

Matters required to be Stated in Prospectus.

1. Except where the prospectus is published as a newspaper advertisement, the contents of the memorandum, with the names, descriptions, and addresses of the signatories, and the number of shares subscribed for by them respectively.

2. The number of founders or management or deferred shares, if any, and the nature and extent of the interest of the holders in the property and profits of the company.

3. The number of shares, if any, fixed by the articles as the qualification of a director, and any provision in the articles as to the remuneration of the directors.

4. The names, descriptions, and addresses of the directors or proposed directors.

5. Where shares are offered to the public for subscription particulars as to—

(i) the minimum amount which, in the opinion of the directors, must be raised by the issue of those shares in order to provide the sums, or, if any part thereof is to be defrayed in any other manner, the balance of the sums, required to be provided in respect of each of the following matters:—

(*a*) the purchase price of any property purchased or to be purchased which is to be defrayed in whole or in part out of the proceeds of the issue;

(*b*) any preliminary expenses payable by the company, and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or agreeing to procure subscriptions for, any shares in the company;

(*c*) the repayment of any moneys borrowed by the company in respect of any of the foregoing matters;

(*d*) working capital; and

(ii) the amounts to be provided in respect of the matters aforesaid otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.

6. The amount payable on application and allotment on each share, and, in the case of a second or subsequent offer of shares, the

amount offered for subscription on each previous allotment made within the two preceding years, the amount actually allotted, and the amount, if any, paid on the shares so allotted.

7. The number and amount of shares and debentures which within the two preceding years have been issued, or agreed to be issued, as fully or partly paid up otherwise than in cash, and in the latter case the extent to which they are so paid up, and in either case the consideration for which those shares or debentures have been issued or are proposed or intended to be issued.

8. The names and addresses of the vendors of any property purchased or acquired by the company, or proposed so to be purchased or acquired, which is to be paid for wholly or partly out of the proceeds of the issue offered for subscription by the prospectus, or the purchase or acquisition of which has not been completed at the date of issue of the prospectus, and the amount payable in cash, shares, or debentures, to the vendor, and where there is more than one separate vendor, or the company is a sub-purchaser, the amount so payable to each vendor.

9. The amount, if any, paid or payable as purchase money in cash, shares, or debentures, for any such property as aforesaid, specifying the amount, if any, payable for goodwill.

10. The amount, if any, paid within the two preceding years, or payable, as commission (but not including commission to sub-underwriters) for subscribing or agreeing to subscribe, or procuring or agreeing to procure subscriptions, for any shares in, or debentures of, the company, or the rate of any such commission.

11. The amount or estimated amount of preliminary expenses.

12. The amount paid within the two preceding years or intended to be paid to any promoter, and the consideration for any such payment.

13. The dates of and parties to every material contract, not being a contract entered into in the ordinary course of the business carried on or intended to be carried on by the company or a contract entered into more than two years before the date of issue of the prospectus, and a reasonable time and place at which any such material contract or a copy thereof may be inspected.

14. The names and addresses of the auditors, if any, of the company.

15. Full particulars of the nature and extent of the interest, if any, of every director in the promotion of, or in the property proposed to be acquired by, the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares or otherwise by any person either to induce him to become, or to qualify him as, a director, or, otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

16. If the prospectus invites the public to subscribe for shares in the company and the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.

17. In the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the length of time during which the business of the company or the business to be acquired, as the case may be, has been carried on.

PART II.

REPORTS TO BE SET OUT IN PROSPECTUS.

1. A report by the auditors of the company with respect to the profits of the company in respect of each of the three financial years immediately preceding the issue of the prospectus, and with respect to the rates of the dividends, if any, paid by the company in respect of each class of shares in the company in respect of each of the said three years, giving particulars of each such class of shares on which such dividends have been paid and particulars of the cases in which no dividends have been paid in respect of any class of shares in respect of any of those years, and, if no accounts have been made up in respect of any part of the period of three years ending on a date three months before the issue of the prospectus, containing a statement of that fact.

2. If the proceeds, or any part of the proceeds, of the issue of the shares or debentures are or is to be applied directly or indirectly in the purchase of any business, a report made by accountants who shall be named in the prospectus upon the profits of the business in respect of each of the three financial years immediately preceding the issue of the prospectus.

PART III.

PROVISIONS APPLYING TO PARTS I. AND II. OF SCHEDULE.

1. The provisions of this Schedule with respect to the memorandum and the qualification, remuneration and interest of directors, the names, descriptions and addresses of directors or proposed directors, and the amount or estimated amount of the preliminary expenses, shall not apply in the case of a prospectus issued more than two years after the date at which the company is entitled to commence business.

2. Every person shall for the purposes of this Schedule be deemed to be a vendor who has entered into any contract, absolute or conditional, for the sale or purchase, or for any option of purchase, of any property to be acquired by the company, in any case where—

(*a*) the purchase money is not fully paid at the date of the issue of the prospectus;

(*b*) the purchase money is to be paid or satisfied wholly or in part out of the proceeds of the issue offered for subscription by the prospectus;

(*c*) the contract depends for its validity or fulfilment on the result of that issue.

3. Where any property to be acquired by the company is to be taken on lease, this Schedule shall have effect as if the expression "vendor" included the lessor, and the expression "purchase money" included the consideration for the lease, and the expression "sub-purchaser" included a sub-lessee.

4. For the purposes of paragraph 8 of Part I of this Schedule where the vendors or any of them are a firm, the members of the firm shall not be treated as separate vendors.

5. If in the case of a company which has been carrying on business, or of a business which has been carried on for less than three years, the accounts of the company or business have only been made up in respect of two years or one year, Part II of this Schedule shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years.

6. The expression "financial year" in Part II of this Schedule means the year in respect of which the accounts of the company or of the business, as the case may be, are made up, and where by reason of any alteration of the date on which the financial year of the company or business terminates the accounts of the company or business have been made up for a period greater or less than a year, that greater or less period shall for the purpose of the said Part of this Schedule be deemed to be a financial year.

FIFTH SCHEDULE.

FORM OF STATEMENT IN LIEU OF PROSPECTUS TO BE DELIVERED TO REGISTRAR BY A COMPANY WHICH DOES NOT ISSUE A PROSPECTUS OR WHICH DOES NOT GO TO ALLOTMENT ON A PROSPECTUS ISSUED.

THE COMPANIES ACT, 1929.

Statement in lieu of Prospectus

delivered for registration by

[*Insert the Name of the Company.*]

Pursuant to section 40 of the Companies Act, 1929.

Delivered for registration by

The nominal share capital of the company	£
Divided into	Shares of £ each. " " " " " "
Amount (if any) of above capital which consists of redeemable preference shares.	Shares of £ each.
The date on or before which these shares are, or are liable, to be redeemed.	
Names, descriptions and addresses of directors or proposed directors.	
If the share capital of the company is divided into different classes of shares, the right of voting at meetings of the company conferred by, and the rights in respect of capital and dividends attached to, the several classes of shares respectively.	
Number and amount of shares and debentures agreed to be issued as fully or partly paid up otherwise than in cash.	1. shares of £ fully paid. 2. shares upon which £ per share credited as paid. 3. debenture £ . 4. Consideration :—
Names and addresses of vendors of property purchased or acquired, or proposed to be purchased or acquired by the company.	

Amount (in cash, shares, or debentures) payable to each separate vendor.	
Amount (if any) paid or payable (in cash or shares or debentures) for any such property, specifying amount (if any) paid or payable for goodwill.	Total purchase price £ Cash . . . . £ Shares . . . £ Debentures . . £ Goodwill . . . £
Amount (if any) paid or payable as commission for subscribing or agreeing to subscribe or procuring or agreeing to procure subscriptions for any shares or debentures in the company; or	Amount paid. ,, payable.
Rate of the commission	Rate per cent.
The number of shares, if any, which persons have agreed for a commission to subscribe absolutely.	
Estimated amount of preliminary expenses.	£ .
Amount paid or intended to be paid to any promoter.	Name of promoter. Amount £ .
Consideration for the payment . .	Consideration :—
Dates of, and parties to, every material contract (other than contracts entered into in the ordinary course of the business intended to be carried on by the company or entered into more than two years before the delivery of this statement).	
Time and place at which the contracts or copies thereof may be inspected.	
Names and addresses of the auditors of the company (if any).	
Full particulars of the nature and extent of the interest of every director in the promotion of or in the property proposed to be acquired by the company, or, where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or to the firm in cash or shares, or otherwise, by any person either to induce him	

to become, or to qualify him as, a director, or otherwise for services rendered by him or by the firm in connection with the promotion or formation of the company.

If it is proposed to acquire any business, the amount, as certified by the persons by whom the accounts of the business have been audited, of the net profits of the business in respect of each of the three financial years immediately preceding the date of this statement provided that in the case of a business which has been carried on for less than three years and the accounts of which have only been made up in respect of two years or one year the above requirement shall have effect as if references to two years or one year, as the case may be, were substituted for references to three years, and in any such case the statement shall say how long the business to be acquired has been carried on.

(Signatures of the persons above-named as directors or proposed directors, or of their agents authorised in writing.)

Date

NOTE.—In this Schedule the expression "vendor" includes a vendor as defined in Part III of the Fourth Schedule to this Act, and the expression "financial year" has the meaning assigned to it in that Part of the said Schedule.

APPENDIX B.

COMPARATIVE TABLE.

Companies (Cons.) Act, 1908.	Companies Act, 1929.	Companies (Cons.) Act, 1908.	Companies Act, 1929.
Section 1 (1)	Section 357	Section 28	Section 65
1 (2)	358	29	64
2	1	30	98
3 (1)	2 (1), (2), (4)	30 (2), (3)	110
4 (1)	2 (1), (2), (3)	31	91
4 (2)	2 (4)	32	38, 100
5 (1)	2 (1), (2)	33	102
6	3	34	103
7	4	35	104
8 (1)	17	36	105
8 (2)	19 (2), (3), (4), (5)	37 (1), (2)	70
9	5	37 (3), (5)	97
9 (2)	80	37 (4)	141
10 (1), (2)	6	38	71
10 (3), (4)	8	39	48
11	8	40	—
12	9	41	50
13 (1)	10	42	51
13 (2)	319	43	52, 95
14	20	44	7, 52, 86
15	12	45	—
16 (2)	13, 14	46	55
17	15	47	56
18	23	48	—
19	14	49	56
20	18	50	57
21	21	51, 52	58
22	62	53	59
23	68	54	60
24	25	55	58
25	95	56	56
26 (1), (2)	108	57	16
26 (4), (5)	110	58	53
27	101	59	49

COMPANIES (CONS.) ACT, 1908.	COMPANIES ACT, 1929.
Section 60	Section 146
61	147
62	92
63	93
64	112
65	113
65 (9)	171
66	114
67	115
68	116
69	117
70	118
71	120
72	140
73	141
74	143
75	144
76	29
77	30
78	31
79	32
80	34
81 (4), (6)	35
81 (4), (6), (9)	355
82	40
83	36
84	37
85 (3)–(6)	39
86	41
87	94
88	42
89	43
90	44
91	54
92	67
93 (1)	79
93 (7)	80
93 (2), (3)	82
94	86
95	310
96	85
97	84
98	82
99 (1)	80
99 (3)	83
100	88

COMPANIES (CONS.) ACT, 1908.	COMPANIES ACT, 1929.
Section 100 (1)–(3), (5)	Section 166
101	89
102	73
103	74
104	75
105	76
106	77
107	78
108	131
109 (1), (2), (3), (4), (6)	135
110	137
111	138
112 (1), (2), (4), (6), (7)	132
112 (3)	133
113 (3), (5), (6), (4)	129
113 (3)	130
113 (2), (1), (5)	134
114	130
115	28
116	370
117	33
118 (1)	11
118 (1)	14
118 (1)	108
118 (2)–(3)	379
119	—
120	153
121	26
122	156
123	157
124	158
125	159
126	160
127	161
128	162
129	168
130	169
131 (5), (6), (7)	163
132	164

COMPANIES (CONS.) ACT, 1908.	COMPANIES ACT, 1929.	COMPANIES (CONS.) ACT, 1908.	COMPANIES ACT, 1929.
Section 133	Section 165	Section 164	Section 204
134	—	165	205
135	—	166	206
136	167	167	207
137	170	168	208
138	178	169	210
139	175	170	211
140	172	171	213
141	171	172	221
142	177	173	220
143	176	174	214
144	202	175	216
145	288	176	218
146	179	177	219
147	181	178 (2)	163
148	182	178 (1)	373
149 (1)	183	179	222
149 (2), (3) (a)	184	180	223
149 (3) (b), (7), (9) (a)	185	181	224
149 (3) (c), (8)	186	182	225
149 (6)	188	183	227
150	189	184	228
151	191	185	226
151 (5)	184	186	232, 241, 247, 248, 249
152 (1), (2), (3)	185	187	250
152 (1)–(4), (6)	186	188	—
152 (1) (b), (2)	198	189	233, 242
153	186	190	—
154	194	191	251
155	195	192	234
156	193	193	252
157	197	194 (2)	235
158	192	194 (2)	244
159	196	194 (1)	248
160 (1)–(8)	199	195	236, 245
160 (9)	200	196	254
161	209	197	255
162	307	198	175
163	203	199	256
		200	257
		201	288
		202	259
		203	260
		204	187 (3)
		205 (2)	173

COMPANIES (CONS.) ACT, 1908.	COMPANIES ACT, 1929.
Section 205 (1)	Section 229, 258
206	261
207	262
208	—
209	264
210	265
211	174, 258
212	266
213	270
214	191, 248, 260
215	276
216	272
217	277
218	363
219	288
220	282
221	212
222	283
223	294
224	284
224 (4)–(7)	285
225	289
226	290
227	291
228	293
229	300
230	301
231	302
232	—
233	303
234	—
235	304
236	378
237	305
238	374
239	297
240	298
241	299
242	295
243 (1)–(5), (8)	312
243 (6), (7)	314
244	313
245	316

COMPANIES (CONS.) ACT, 1908.	COMPANIES ACT, 1929.
Section 246	Section 317
247	318
248	319
249	821
250	322
251	360
252	323
253	324
254	325
255	326
256	359
257	327
258	328
259	329
260	330
261	331
262	332
263	333
264	334
265	335
266	336
267	337
268	338
269	339
270	340
271	341
272	—
273	342
274 (1)	343
274 (1)	344
274 (1)	346
274 (4)	348
275	345
276	366
277	367
278	371
279	372
280	375
281	362
282	364
283	376
284	377
285	380
286–296	

COMPANIES ACT, 1913.	COMPANIES ACT, 1929.
Section 1 (1), (2)	Sections 26, 27
1 (3)	111
COMPANIES (PARTICULARS AS TO DIRECTORS) ACT, 1917.	COMPANIES ACT, 1929.
Section 1	Sections 108, 144, 145
COMPANIES (FOREIGN INTERESTS) ACT, 1917.	Repealed by Act of 1928, Sched. III.

COMPANIES ACT, 1928.	COMPANIES ACT, 1929.	COMPANIES ACT, 1928.	COMPANIES ACT, 1929.
Section 1 (3)	Section 18	Section 16	Section 45
2	5	17	61
3	22	18	46
4 (a), (b)	23	19 (2)	57
4 (c)	24	19 (1)	58
5 (1), (2), (4)	96	20	92
5 (3)	98	21	113
6 (b)	92	22	114
6 (a), (b), (c)	108	23	115
6 (e), (d), (f)	110	24	116
7 (3)	92	25	117
7 (1), (2)	109	26	118
7 (4), (5)	110	27	121
8 (1)	63	28	139
8 (2)	69	29	140
9	98	30 (a), (b), (c)	119
10 (1)–(3)	103	30 (d)	287
10 (2), (3)	104	31	144
10 (2)	105	32	38
10 (5)	106	33 (i), (iv), (v), (vi)	35
10 (4)	108	33 (i), (vi)	354
11	107	34	35
12, 13	50	35 (1)	35
14	51	35 (2), (3)	39
15 (c)	7, 53	35 (3)	94
		36 (1)–(3)	40, 41
		37	47

COMPANIES ACT, 1928.	COMPANIES ACT, 1929.
Section 37 (3)	Section 108
38	43
39 (1), (2), (5) (a)	122
39 (3), (4), (5) (b)	123
39 (6) (b) (d)	129
39 (6) (e), (6) (c), (e)	130
40 (1)–(3)	124
40 (4)	125
40 (5)	126
40 (6)	127
41	130
42 (1)	67
42 (2)	66
43 (1) (a) (b), (2)	79
43 (1) (c), (2)	81
43 (2)	91
43 (2)	266
44	86, 310
45 (2)	309
45 (1)	311
46	73
47	75
48 (1) (a), (1) (b)	135
48 (1) (a)	136
48 (3)	137
49	370
50	155
51	—
52	279, 311, 315
53	153 (5)
54	154
55	27
56	163
57	175
58	202
59	180
60	181
61	190
62	214
63	216
64	226
65	234
66	236
67 (1)	230
67 (2), (3), (4), (7), (9)	238
67 (5)	239
67 (6)	240
67 (8) (a)	241
67 (8) (b)	242
67 (8) (c)	243, 248
67 (8) (d)	244, 245
67 (8) (e)	283
67 (11)	305
68	267
69	268
69 (3)	269
70	269
71	296
72	273
73	271
74	274
75	275
76	182, 217
77	277
78 (1)	152
78 (2)–(4)	372
79	128
80 (4)	128, 148
81	149
82	150
83	151
84	142
85	133, 278, 306
86 (2), (3)	132
86 (1)	133
86 (4)	134
86 (5)	152
86 (5)	372
87	280, 308
88	314
89 (1)	343
89 (1), (2)	344

COMPANIES ACT, 1928.	COMPANIES ACT, 1929.
Section 89 (2)	Section 346
89 (5)	348
89 (3)	350
90 (2)	347
90 (1)	349
90 (4)	352
90 (5)	353
92	338
92	356
93 (1), (3), (5), (7), (4), (6)	354
93 (2), (3)	355
94	380
95	368
96	369
97	314
98	281
99	—
100 (1)–(3), (5)	166, 167
100 (4)	374
101	191
102	305
103	263

COMPANIES ACT, 1928.	COMPANIES ACT, 1929.
Section 104	Section 265
105	270
106	276
107	284
108	191, 198, 199
108 (1)	200
108 (2)	206
108 (1)	248
109	136
110 (6)	136
110 (4)	142
110 (1)	267
110 (1)	268
110 (2)	271
110 (3)	277
110 (5)	356
110 (6)	369
111	215
112	286
113	253
114	292
115	314
116	—
117	—
118	—

INDEX.

A.

ABRIDGED PROSPECTUS, 79.

ACCOUNTS, 229, 231.
audit of, 236.
balance sheet, 229, 230.
company, of, 229.
contents of, 229.
directors to keep, 229.
form of, 232–235.
keeping of, 231.
report of auditors upon, 236.

ACCRETIONS TO CAPITAL
may be distributed in dividends, 148, 149.

ACT OF PARLIAMENT,
company incorporated by, 8.

ACTION,
change of company's name does not abate, 20.
debenture-holders, by. *See* DEBENTURE-HOLDER'S ACTION.
limitation of, for dividends, 144.
single shareholder, by, 208.
stay or restraint of, after presentation of winding-up petition, 291.
use of name of company in, 208 *n.* (*r*).

ADJUSTMENT
of rights of contributories *inter se*, 281, 282.

ADMINISTRATOR
of deceased member, 96.

AGENT,
director is, for company, 199, 201.
for company unformed, contract with, 54, 55.

AGREEMENT,
allotment, for, 99.
Articles of Association, how far an, 46, 47.
director and company, between, 212.
filing of, for allotment of shares, 91.
made before incorporation of company, 54, 55.
by letters sent through the post, 101, 102.
prospectus, to be specified in, 66, 67, 76.
provisional before commencement of business, 74.
shares, to take, 84.
to place shares, 88.
underwrite shares, to, 194, 197.

ALIEN
enemy. *See* ENEMY.
may subscribe Memorandum of Association, 29.

"A" LIST OF CONTRIBUTORIES, 93, 279.

ALLOTMENT OF SHARES, 99.
conditional, 102.
contract constituting title to, when to be registered, 91.
delay in, 102.
directors are trustees as to, 200.
minimum subscription, 100.
notice of, sent by post, 101, 102.
to subscriber of memorandum is unnecessary, 84.

ALTERATION
of Articles of Association, 48.
Memorandum of Association, 25, 26.
change of name, by, 19.
increase of capital, by, 135, 136.
reduction of capital, by, 138.
with regard to the company's objects, 25, 26.

"AND REDUCED,"
addition to company's name of the words, 141.

ANNUAL LIST OF MEMBERS, 97.
in case of a private company, 244.

ANNUAL MEETING
of company, 219.

ANNUAL RETURN, 97.

ANNUAL SUMMARY, 97, 321, 322.

APPEAL
from registrar, 262.
winding-up petition, against, 263.

APPLICATION FOR SHARES, 99.
by mistake, 102, 103.
conditional, 102.
form of, 99.
withdrawal of, 102.

APPOINTMENT
of auditors, 236.
directors, 202.
liquidators
in voluntary winding up, 311.
winding up by the court, 293, 294.
under supervision, 314.

APPORTIONMENT
dividends between tenant for life and remaindermen, 144, 145.

ARRANGEMENTS
with creditors on voluntary winding up, 273.

ART,
companies formed for the purpose of promoting, 18.

ARTICLES OF ASSOCIATION, 2, 3.
adoption of Table A by, 46.
aliens, rights of, in, 51.
alteration of, 48, 49, 51.
breach of contract, by change of, 51.
cannot evade sect. 234...316, 318.
contract, how far they constitute a, 46, 47.
copies to be supplied to members, 52.
exclusion of Table A by, 30.
execution of, 45.
form of, 30 *et seq.*
how far they bind the Company, 46.
Members, 47.
inconsistent with memorandum, if, 48.
inspection of, 52.
knowledge of, imputed to persons dealing with the company, 52.
majority, powers of, over minority, under, 51.
may be freely altered, 48.
Memorandum of Association, how affected by, 48, 49.
minority, protection of, 49.

ARTICLES OF ASSOCIATION—*continued.*
must not contain anything illegal, 48.
outsiders, how far affected, 52.
registration of, 52.
signing of, 46.
stamp on, 46.
subject to the Memorandum, 48.
subscription of, 45.
ultra vires the company, must not be, 48.

ASSOCIATION CLAUSE, 29.

AUDIT
accounts of company, 236.

AUDITORS,
access to company's books, etc., 236.
agents for shareholders, are, 241.
appointment of, 236.
director cannot be an auditor, 236.
duties of, 237, 238.
liability of, 240.
moneys, etc., in possession of company, duty to ascertain 239, 240.
officers of the company, are, 240.
remuneration of, 241.
rights of, 237.
statutory provisions as to, 236.

B.

BALANCE SHEET, 229.
contents of, 229, 230.
form of, 232–235.
signing of, 230.

BANKING COMPANIES
consisting of more than ten members must be registered, 7.

BANKRUPT,
company cannot be, 249.
disclaimer of shares by trustee of, 115.
provisions in articles as to sale of shares of a, 109.
transfer of shares of, 115.

BANKRUPTCY,
member, of, 115.
rules of, how far applicable in a winding up, 282, 283.

BEARER,
debentures to, negotiability of, 173.
share warrants to, 115–117.

BLANK TRANSFER OF SHARES, 109.

"B" LIST OF CONTRIBUTORIES, 93, 279.

BOARD OF TRADE,
investigation by, 217.
liquidators in voluntary winding-up, 311.
in winding up by the court, 299.

BOARD MEETINGS,
directors habitually abstaining from, 215, 216.
meetings at, 213.
quorum at, 204.

BONUS SHARES, 150.

BORROWING POWERS, 152.
company's, 152.
effect of exceeding, 153.
powers of directors, as to, 152.
receiver, by, 192.
restrictions on exercise of power, 152.
secured, property, how may be, on exercise of, 155, 156.
ultra vires, 153.

BROKER,
deposit of share certificates of clients with his bankers, 110.

BROKERAGE, 194.

BUILDING SOCIETIES, 10.

BUSINESS,
not commenced within a year, ground for winding up, 250.
power of liquidator to carry on, 296.
restrictions on commencement of, 74.

C.

CALLS, 31, 117.
advance of, payment in, 119.
after transfer, 120.
Articles of Association, form, in, 31.
cannot be made until minimum subscription subscribed, 120.
cash, payment of, in, 120.

CALLS—*continued.*
date of, 121.
directors are trustees as to, 119.
executors, liability of, for, 96.
forfeiture for non-payment of, 121.
future, 121.
improperly made, 119.
interest on, 119.
invalid, 118.
irregularity, 118.
liability for—
executors, of, 96.
transferee, of, 120.
lien for, 125.
liquidator, by, 280.
minimum subscription before making of, 120.
not barred by forfeiture of shares, 124.
power to make, 119.
set-off against, in winding up, as to, 281.
speciality debts are, 118.
Statute of Limitations, 121.
transfer of shares, effect on, 120.
winding up, made by court in, 280.

CANCELLATION OF FORFEITED SHARES,
amounts to reduction of capital, 122.

CANVASSING
shares, house to house, 79.

CAPITAL, 3.
alteration of, 135, 136.
amount of, 27.
cancellation of lost, 141, 142.
circulating, 145.
classes of, 129.
rights of, change, 130.
consolidated, 137.
deferred shares, 133.
diminution of, 138, 142.
dividends may not be paid out of, 144.
division of, 130.
fixed, 146.
founders' shares, 133.
increase of, 135.
issued, 129.
meanings of, 129.
mortgage of uncalled, 154.

CAPITAL—*continued.*
nominal, 129.
ordinary shares, 133.
paid-up, 129.
power to subdivide, 137.
preference shares, 131.
redeemable, 133.
reduction of, 138.
all-round reduction, 139.
evidence of loss, 142.
proceedings to obtain leave of court, 140.
words "and reduced," 141.
reorganisation of, 137.
reserve, 134, 155.
uncalled, mortgage of, 154, 155.
receiver in case of, 155.

CAPITAL ASSETS, 129.

CAPITAL CLAUSE, 27.

CAPITALISATION OF PROFITS, 150.
effect of, 150.

CASH,
consideration other than, allotment for, 91.
meaning of, 89.
payment for shares in, 89.

CERTIFICATE,
effect of, 104.
incorporation, of, 58, 59.
conclusiveness of, 58.
of registration, conclusive, 58.
object of, 103.
of shares and stock, 103.
estoppel raised by, 104, 105.
form of, share, 103.
lost, renewal of, 104.
mortgage by deposit of, 104, 109.
primâ facie evidence of title, 103, 104.

CERTIFICATION OF TRANSFERS, 111.

CHAIRMAN,
closing of meeting by, 223.
declaration by, as to passing of resolution, 227.
of meetings, 223.

CHANGE OF NAME, 19.

CHARGE,
"floating." *See* FLOATING CHARGE.

CHARTER,
company incorporated by, 8.

CHEQUES,
director signing, 216.

CIRCULATING CAPITAL, 145.

CLASS OF SHAREHOLDERS,
what is, 137 *n.*

CLOG ON EQUITY,
whether doctrine applies to debentures, 169.

COMMENCEMENT OF BUSINESS,
before minimum subscription has been subscribed, 74.
restrictions on, 74.

COMMENCEMENT OF WINDING UP
by the court, 261.
voluntary, 267.

COMMISSION,
underwriting, 194.

COMMITTEE OF INSPECTION, 293.

COMPANIES ACT, 1929,
s. 108.—Annual Return, 321.
s. 110.—Annual Return, general provisions, 323.
Fourth Schedule.—Specific requirements as to particulars of prospectus, 325–328.
Fifth Schedule.—Statement in lieu of prospectus, 329.

COMPANY,
bankrupt, cannot be made, 249.
borrowing powers of, 152.
certificate of incorporation, 58.
charge uncalled capital, may, 154.
how formed, 54.
liability, limitations of, 291.
mortgages of, registration of, 155, 156.
preliminary contracts of, 54.
registration of, 56.
when actually in existence, 59.
deemed unable to pay its debts, 251.

COMPENSATION,
for misstatements in prospectus, 64.

COMPOSITION WITH CREDITORS, 273.

COMPULSORY WINDING UP. *See* WINDING UP BY ORDER OF THE COURT.

CONCEALMENT
in prospectus, 63.

CONCLUSION
of compulsory winding up, 263.
voluntary winding up, 270.

CONDITIONAL
applications for shares, 102.

CONSIDERATION OTHER THAN CASH, 91.

CONSOLIDATION OF SHARES, 137.

CONSTRUCTIVE NOTICE,
company bound by, 95.
in case of debentures, 168.

CONTRACT,
allotment of shares for consideration other than cash, for, 91.
articles of association, how far a, 46, 47.
constituting title of allottee to shares, 101.
director and company, between, 212.
disclosure of, in prospectus, 66, 67, 76.
filing of, 91.
made before incorporation of company, 54.
preliminary, 54.
provisional before commencement of business, 74.
shares, to take, 85, 101, 102.
underwrite shares, to, 197.
with trustee for the company not formed, 56.

CONTRIBUTORIES. *See* SHAREHOLDERS.
adjustment of rights of, *inter se*, 281.
"A" list of, 93, 279.
bankruptcy of, 115.
"B" list of, 93, 279.
calls, set off of debt by, against liability for, 281.
death of, 96, 114.
deceased, liability of representatives of, 96.
holder of fully paid shares, 281, 282.

CONTRIBUTORIES—*continued.*
infant, 87.
liability of, 89, 278.
lists of, 93, 279.
meeting of. *See* MEETINGS.
past members, 93, 279.
petitions by, 254.
winding up, list of, to be settled by liquidator, 278.

CORPORATION,
powers of, 8.

COSTS,
debenture-holder's action, of, 185, 186.
in compulsory winding up, 263.

COUPONS
for dividends, on share warrants, 116, 117.

COUNTY COURT,
winding up petition to, when, 261.

COURT,
reduction of capital,
leave of, when may be dispensed with, on, 122.
winding up, by. *See* WINDING UP BY ORDER OF THE COURT.

CREDITORS,
application to court by, in winding up, 256, 257.
arrangements with, 273.
preferential, 283, 284.
proofs by, 285.
winding-up petition by, 256.
wishes of, 254.

CROWN DEBTS,
no priority in winding up, 284.

CUM DIVIDEND,
meaning of expression, 151.

D.

DATE,
calls, of, 121.
commencement of compulsory winding up, 261.
voluntary winding up, 267.
prospectus, of, 65.

DEATH,
of member, 114.
effect on lien, 128.

DEBENTURE-HOLDERS,
actions by, 184.
appointment of receiver by, 184, 186.
modifying rights, 171.
petition for winding up, can present, 185.
receiver, can obtain appointment of, 170.
reduction of capital, objection to, 142.
register of, 176.
remedies of, 184.
sale by, 184.
set off, none against company, 168.
winding up by, 185.

DEBENTURE-HOLDERS' ACTION,
appointment of receiver in, 184, 189, 190.
costs of, 186.
solicitors' lien for, 186 *n* (*l*).
final judgment in, 184.
foreclosure, 184.
jeopardy of security, 190.
manager appointed by court, 191.
receiver appointed in, 189, 190.

DEBENTURES. *See* FLOATING CHARGE.
agreement to issue, 178, 183.
assignable subject to equities, 180.
bearer, payable to, 172.
form of, 172.
negotiable, are, 173, 174.
transfer of, 180
conditions on, 159–162.
"created" date when, 177.
debenture stock, contrasted with, 157.
deed not necessary, 162.
definition of, 157.
discount, issue at a, 182.
equities, company may but need not disregard, 169.
floating charge, 164, 165.
foreclosure of, 184.
form of, 159, 162.
future contingent charge, agreement to give, 183 *n*.
inspection, right of, 176.
interest, undue delay in payment of, 170.
irredeemable, 163.
issue of, 182.
at a discount, 182.
kinds of, 158.
manager, appointment of, 191.

DEBENTURES—*continued.*
meaning of, 157.
modification of rights, 171.
"mortgage debentures"—meaning of, 158.
negotiable, when, 173.
pari passu, meaning of, 163.
payable to registered holder, 158.
perpetual, 162, 163.
priorities in case of, 164.
receiver appointed by the court, 187, 189.
debenture holders, 186, 188.
register of, kept by company, 176.
registrar, 176.
registration of, 174–179.
compulsory, 175.
need not be registered as bills of sale, 174.
land charges, 174.
non-registration, effect of, 177.
particulars of existing charge, 175, 176.
right of inspection of register, 176.
time for, 178.
re-issue of, 181.
specific performance of agreement to take, 183.
time, extension of, for, 178.
transfer of, 180, 181.
transferred subject to equities, 180.
transfers delivered to company, 169, 170.
trust deed, 170.
advantages of, 170.
contents of, 171.
form of, 171.
winding up, cannot be issued after, 182.

DEBENTURE STOCK,
certificate of, 158.
contrasted with "debentures," 157.
divisibility of, 158.
is a debt, 158.
meaning of, 157, 158.

DEBTS,
dividends are, 144.
inability to pay, when company deemed, 251.
preferential, 191, 283, 284.
proof of, in winding up, 285.
remuneration of directors, when may constitute a debt, 209, 210.
set-off, 286.

DE FACTO DIRECTORS, 208.

DEED OF ARRANGEMENT, 287.

DEFERRED SHARES, 133.

DEFUNCT COMPANY,
may be struck off register, 251.

DELAY,
allotment of shares, in, 102.

DELEGATION,
powers by directors, of, 213.

DEPRECIATION,
of capital, payment of dividends without regard to, 146.

DIMINUTION OF CAPITAL, 138, 142.

DIRECTORS,
accounts to be kept by, 229.
agents for company, are, 199, 201.
allotment of shares by, 200.
appointment of, 202.
first, 202.
approval of transfer by, 108.
assignment of office of, 203.
auditor, director cannot be an, 236.
balance sheet to be furnished by, 229.
bankruptcy of, 207.
bonâ fide, not liable personally if, 215.
board meetings, attendance at, 215, 216.
business to be transacted at, 213.
minutes to be kept, 213.
calls to be made by, 117.
ceasing to hold qualification, 207.
cheques, liability for signing, 216.
compensation by, 64.
consent to act, 71, 72.
contracts of, with company, 212, 213.
on behalf of company made by, 201.
contract to take qualification shares from company, 72.
contribution between, 216.
de facto, acts by, 207.
definition of, 199, 200.
delegation of powers of, 213.
disqualification of, 207, 208.

DIRECTORS—*continued.*
duties of, 217, 218.
election of, 202, 203.
fiduciary position of, 200, 201.
first, 202.
forfeiture of shares by, 121.
fraud of, 63.
interested in company's contracts, 212.
liability of, 214–218.
agents, as, 201, 214.
articles cannot prevent, 215.
co-directors, for acts of, 216.
dividends paid out of capital, for, 148.
for *ultra vires* acts, 214.
fraud, for, 63.
illegal commencement of business, for, 74.
misfeasance, for, 216.
negligence, for, 214, 215.
non-disclosure in prospectus, for, 63, 64.
penalties under Companies Act, 1929...217.
qualification shares, for, 205.
liability of, relief from, 215.
secret profits, 207.
limitation of actions against, 199.
meeting of, 213.
minutes of meetings, 213.
misfeasance summons against, 216.
must take up qualification shares, 72.
names of, to be stated in prospectus, 66.
on all company's circulars, etc., 17, 18.
negligence of, 214, 215.
office of, assignment of, 203.
personal liability of, 214, 215.
position of, 199.
powers of, 211.
delegation of, 213.
winding up, after, 289.
proceedings of, 213.
profit and loss account to be shown to company, 229.
qualification, 205.
shares, agreement to take, 72, 205, 206.
quorum of, 204.
ratification of irregular acts, of, 201, 202.
register of, 203.
removal of, 207, 209.
remuneration of, 209, 210.
resignation of, 209.

DIRECTORS—*continued.*
retirement of, article as to, 42.
rotation of, 42.
secret profits obtained by, 207.
subscribers are first, 30.
trustees, how far, 199, 200.
votes of, 213.
"wilful default," liability for, 214.

DISCLAIMER,
of shares by trustees in bankruptcy, 115.

DISCOUNT,
debentures may be issued at a, when, 182.
forfeited shares re-issued at, 121.
issue of shares at a, 90.
meaning of, 196 *n.*

DISPUTED DEBT,
court will not make a winding-up order on a, 257.

DISQUALIFICATION
of directors, 207.

DISSENTIENT MEMBERS (WINDING UP),
purchase of interest of, 316, 317.

DISSOLUTION OF COMPANY
after compulsory winding up, 263.
effect of on property, 263.
vesting order on, 264.
voluntary winding up, on, 270.

DISTRESS, 166, 291.

DIVIDENDS,
accretions to capital may be used in payment of, 148.
action for, limitation of, 144.
after date of agreement for sale, 151.
apportionment between tenant for life and remaindermen, 144.
are a speciality debt, 144.
capital, may not be paid out of, 144, 148.
cash, are payable in, 145, 150.
company not bound to pay any, 149, 150.
cum dividend, meaning of, 151.
cumulative, 131.
debts, are, 144.
declaration of, 144.

DIVIDENDS—*continued.*
directors may decline to declare, 149, 150.
ex dividend, meaning of, 151.
how paid, 143.
interim, what are, 144 (*and see* INTERIM DIVIDENDS).
payable out of profits only, 144.
payment of, without making provision for losses, 147.
shareholders cannot insist on, 149, 150.
payment out of capital, 148.
proportion in which paid, 143.
shareholders cannot insist on, 149, 150.
"Statute of Limitations" as to, 144.
transfer on, 151.
what are, 143.

DIVIDEND WARRANTS,
if lost, 144.

DOMICILE OF A COMPANY, 20.

DOMINION REGISTER,
keeping of a, 97.

E.

ENEMY,
shareholders, 225.
directors, receiver in case of, 190, 191.

ENLARGEMENT,
of time for registration of debentures, 178.

ESTOPPEL,
as to payment, 105.
share certificate operates as, 104, 105.

EVIDENCE,
certificate of incorporation, how far, 59.

EXAMINATION
of officers as to affairs of a company in liquidation, 289, 290.

EX DIVIDEND,
meaning of expression, 151.

EXECUTION CREDITOR, 167.

EXECUTORS,
liability of, 96.

EXISTING COMPANIES,
registration of, 57.

EXPENSES
of registration, recovery of, 55 *n*.
preliminary, 66.

EXTRAORDINARY MEETING, 220.

EXTRAORDINARY RESOLUTION, 226.
amendments, 228.
definition of, 226.
directors may be removed by, 226.
filing of, 228.
sanctioning compromise with creditors, 273.
voluntary winding up, for, 267.
when valid despite informalities, 228.

F.

FICTITIOUS PERSON,
allotment of shares to, 88.

FIDUCIARY POSITION
of directors and promoters, 60, 200.

FILED CONTRACT, 91.

FILING OF PROSPECTUS, 65.

FINAL MEETING OF CREDITORS, 313.

FIRST GENERAL MEETING, 219.

FIXED CAPITAL, 146.

FLOATING CHARGE, 164.
characteristics of, 165.
"clogging the equity," 169.
crystallisation of, 165.
foreclosure, 184.
postponement of, 166.
priorities in case of, 166, 167.
priority of preferential debts over, 283.
registration of, 175.
specific mortgages after, 165.
what is a, 164, 165.
within three months of winding up, how far void, 167, 287, 288.

FORECLOSURE ACTION, 184.

FOREIGN COMPANY,
carrying on business in England, particulars to be filed by, 59.
land held by, 79.
sale of assets to, in reconstruction, 319.
winding up by court of, 260.

FOREIGNER (*and see* ENEMY)
may subscribe memorandum of association, 29.

FORFEITED SHARES, 121.
arrears of calls, 122, 124.
cancellation of, 122.
purchaser of, 122.
re-issue of, 121.
setting aside, 122.

FORFEITURE, 121.
for proceedings against company, 123, 124.
irregularity in, 123.
liability for calls after, 124.
power to declare, is a trust, 122.
relief against, will not be granted, 122.
sale of forfeited shares, 121.
shares may be re-issued at a discount, 121.

FORGED TRANSFER
of shares, 113.

FORM
of application for shares, 99.
Articles of Association, 30 *et seq.*
balance sheet, 232-235.
certificate of shares, 103.
of debenture, 159.
trust deed, 171.
Memorandum of Association, 13
Prospectus, 80.
share warrant, 116.
transfer of shares, 106.

FORMATION OF A COMPANY,
costs of, 55 *n.*, 66.
steps in, 12.

FOUNDERS' SHARES, 133.

FRAUD
directors, of, 214.
in prospectus, 61, 62.
on minority, 49.
rescission of contract for, 62.
winding up for, 252, 253.

FRAUDULENT PREFERENCE, 287.

FUTURE CALLS,
liability of transferee for, 120.

G.

GARNISHEE ORDER, 166.

GENERAL MEETINGS. *See* MEETINGS.

GOODWILL,
prospectus to specify amount payable for, 66

GUARANTEE,
companies limited by, 247.
allotment of shares in, 248.
capital not necessary, 247.
reduction of capital (if any), 248
winding up of, 247.

GUERNSEY,
company registered in, 174 *n.* (*f*).

H.

HIRE PURCHASE AGREEMENT,
priority over debentures, 167

HUSBAND,
liability of, for wife's shares, as to, 87.

I.

IMPLIED POWERS, 23.

INABILITY
to pay debts, 251.

INADVERTENCE,
omission to register mortgage by, 178.

INCORPORATED COMPANIES, 8.

INCORPORATION,
certificate of, 58.

INCREASE
of capital, 135, 136.
notice to registrar, 136.

INDEMNITY,
of past member by transferee, 120.
personal representative of deceased member, 96.
trustee of shares, 95.

INFANT,
allotment of shares to, 87.
attaining majority during winding up, 268.
may be a member, 87.
rescission of contract by, 87.
shares, on repudiation after applying for, money paid not recoverable, 87.

"IN HIS OWN RIGHT,"
meaning of the words, 206.

INJUNCTIONS TO RESTRAIN,
name, use of, misleading, 19.
presentation of winding-up petition, advertisement of, 258.

INSOLVENCY OF COMPANY,
evidence of, 251.
ground for winding-up order, 250.

INSPECTION
Board of Trade, by, 217.
of articles, 52.
contracts mentioned in prospectus, 66, 67.
memorandum, 52.
register of debentures, 176.
members, 97.

INTEREST
on calls, 119.
proof for, on debts, 286.

INTEREST IN LAND,
shares are not, 103.

INTERIM DIVIDENDS, 144.

INTERNAL AFFAIRS
of company, 52, 53.

IRREGULARITY, EFFECT OF,
in appointment of directors, 208.
calls, 118.
forfeiture, 123.
transfers, 113.
in performance of act *intra vires* the company, how cured, 22.

ISSUE OF SHARES AT A DISCOUNT, 90, 196.

ISSUING HOUSE, 69, 70.

J.

JOINT HOLDERS,
rights of, on holding shares, 97.

JUDGMENT CREDITORS, 167.

"JUST AND EQUITABLE,"
meaning of, 252.

L.

LACHES,
in applying for rectification of register, 86, 279, 280.

LAND,
power of company to hold, 23, 79.

LAND CHARGES,
debentures need not be registered as, 174.

LANDLORD,
distress for rent by, 166.

LEAVE OF THE COURT
necessary for altering memorandum, 25, 26.
reduction of capital, 138.

LIABILITY,
limitation of, 27.
of auditors, 240.

LIABILITY—*continued.*
of directors, 214.
executors, 96.
liquidator, 271.
members, 89, 278, 279.

LIEN,
articles usually provide for, 125.
death of member, effect on, 128.
enforceable against trustee, 127.
by sale, 126.
in articles, 33.
not enforceable by forfeiture, 126.
on shares, 125.
priority of, 126.
transfer of shares sold under a, 126.

LIMITATION
by guarantee, 247.
of liability, 27.

LIMITATIONS, STATUTE OF,
calls, 118 *n.*
dividends, 144.
winding up, after, 295, 296.

"LIMITED,"
improper use of, 18.
use of word, 17, 18.
when it may be dispensed with, 18.
licence of Board of Trade required, 18 *n.* (*h*).

LIMITED PARTNERSHIP ACT, 1907...7.

LIQUIDATORS,
voluntary winding up, in,
applications to the court by, 272.
appointment of, 269, 310, 311.
Board of Trade, control over, 311.
books and papers, 314.
calls, 313.
contributories in, 270.
(creditors), meeting in case of, 270.
duties of, 312.
final account of, 269, 270.
meeting, 269, 312.

LIQUIDATORS—*continued.*
voluntary winding up, in—*continued.*
proof of debts, 313.
first meeting of creditors, 312.
liability of, 271.
list of contributories, 271.
payment of monies, 314.
powers of, 311, 312.
registrar to have copy of accounts, 269, 270.
removal of, 310.
remuneration, 311, 313.
statements to registrar, 313.
vacancy in office of, 310.
winding up by the court—
accounts, 306.
acts if *bonâ fide* will not invalidate appointment, 295.
admission and rejection of proofs, 301.
advertisements, 305, 306.
appointment of, 293, 294.
to notify registrar, 294, 299.
Board of Trade supervision over, 299.
books and papers, 307.
calls, power to make, 298, 300.
contracts by, 297.
contributories, settling list of, 299.
corporation cannot be, 294.
custody of books, etc., 295.
disclaim, power to, 298.
dividends paid by, 302.
duties of, 299.
meetings of creditors and contributories, 304.
meetings summoned by, 297.
notice of appointment to registrar, must give, 299.
payment of monies by, 303.
powers of, 296, 299.
proofs, admission and rejection of, 301.
property does not vest in, 295.
provisional, official receiver is, 293.
release, 308.
removal of, 295, 309.
remuneration of, 295, 302, 303.
resignations, 309.
security, 302.
settle lists of contributories, 297, 298.
summon meetings, 297.
who may be appointed, 294, 295.
winding up under supervision, 314.

LIST OF CONTRIBUTORIES,
"A" List, 93, 279.
"B" List, 93, 279.
liquidator must settle, 299.
paid-up shareholders not to be placed on, 281, 282.
persons liable in their own right to be distinguished, 300.
rectification of, 279.

LIST OF MEMBERS,
annual, 97.
at statutory meeting, 220.

LLOYD'S BONDS, 153.

LOST CAPITAL,
power to cancel, 139, 141, 142.

LOST SHARE CERTIFICATE,
renewal of, 104.

M.

MAIN OBJECT,
company usually has a, 23.
winding up, if gone, 250.

MAJORITY,
control of, over minority, 51.

MALICIOUS PRESENTATION OF WINDING-UP PETITION, 260.

MANAGER,
appointment of, 191.

MANAGING DIRECTOR,
unauthorised act by, company may be bound, 53 *n.* (*g*).

MARRIED WOMAN SHAREHOLDER, 87.

MATERIAL CONTRACT,
date and parties to be stated in prospectus, 66, 76.

MEETINGS,
adjournment of, 225, 226.
board (directors), of, 213.

MEETINGS—*continued.*
company, of, 219.
adjournment of, 225, 226.
annual general, 220.
chairman of, 223.
extraordinary meeting, 220.
requisitions by shareholders for, 221.
first, 219.
minimum number, 219.
notice of, 221, 222.
ordinary meeting, 220.
poll at, 223, 224.
proxies, 224, 225.
quorum at, 222.
resolutions at. *See* RESOLUTIONS, etc.
shareholders when may requisition, 221, 222.
show of hands, 223, 224.
statutory meetings, 219, *see* STATUTORY MEETING.
default in holding, 250.
list of members produced at, 220.
report before, 219.
when to be held, 219.
votes at, 223.
creditors, of, 304.
directors, of, 213.

MEMBERS,
actions by, 208.
agreement to become, 84, 85
alphabetical index of, 94.
annual list of, 97, 321.
bankruptcy of, 115.
ceasing to be, 89.
company may be, 86.
death of, 114.
effect on lien, 128.
dissentient, 317.
foreign, 29.
how persons may become, 84.
infant, 29, 87.
liability of past, 278, 279.
present, 89, 278, 279.
married woman, 87.
minimum number of (private company), 244.
not, until name on register, 85.
register of, 94.
signatories of memorandum are, 84.

MEMORANDUM OF ASSOCIATION, 2.
alteration of, 25, 26.
change of name, by, 19.
increase of capital, by, 135.
reduction of capital, by, 138.
with regard to the company's objects, 25.
articles of association, relation to, 48.
capital clause, 27.
contents of, 2.
copies of, to be given to the members, 52.
detailed powers in, 23, 24.
directors, names of, 18.
form of, 13.
inspection of, 52.
knowledge of, imputed to persons dealing with company, 52.
must appear in prospectus, 66.
name of company, to be stated in, 17.
objects of company, to be stated in, 21.
outsider not bound to inquire as to, 52.
registration of, 52.
seven subscribers are necessary, 29.
signatories to, are members, 84.
unalterable, 2.

MINIMUM NUMBER
of directors, 204.
members of registered company, 2, 29.

MINIMUM SUBSCRIPTION, 72.
allotment voidable if not complied with, 100.
amount of, 73.
business cannot be commenced before shares allotted up to amount of, 74.
contracts made before, subscribed, 74.
effect of allotment before, subscribed, 100, 101.
non-subscription within certain time, 73.
no allotment until, subscribed, 73, 100.
prospectus, must be contained in, 72.
return of deposits if minimum subscription be not subscribed, 100.
what is the, 72.

MINORITY,
fraud on the, 49.

MISFEASANCE, 216.

MISREPRESENTATION,
directors' and promoters' liability for, 62, 64.
prospectus, in, 62.

MISTAKE,
application for shares by, 102, 103.

MORTGAGES,
land charges, need not be registered as, 174.
of chattels, 156.
shares, 109.
priority of, 96, 97.
over lien, 126.
register of, kept by company, 155, 176.
registrar, 176.
registration of, 175.
reserve capital cannot be charged, 134.
uncalled capital of, 154.
receiver in case of, 155.

MORTGAGE DEBENTURES, 158 (*and see* DEBENTURES).

N.

NAME OF COMPANY, 17.
action by shareholder in, 208 and *n.* (*r*).
addition of the word "limited" to, 17.
words "and reduced" to, 141.
change of, 19.
injunction against use of, 19.
"limited" word, must be added to, 2, 17.
memorandum, to be stated in, 2, 17.
penalty for not publishing, 18.
registration of, without word "limited," licence of Board of Trade, 18 *n.* (*h*).
similarity of, prohibition of, 19.

NEGLIGENCE,
auditor, of, 238.
company, of, 112, 113.
director, of, 214, 215.
meaning of, 214.

NEGOTIABLE INSTRUMENTS,
debentures payable to bearer are, 174.
share warrants, are, 116.

NEW COMPANIES,
registration of, 56.

NON-DISCLOSURE IN PROSPECTUS, 63.

NOTICE,
allotment of shares, of, 101.
company when bound by, 95, 243.
in lieu of distringas, 110.
meeting of company, of, 221.
of contents of memorandum and articles, 52.

O.

OBJECTS OF A COMPANY, 21.
alteration of, 25.
extension of, 25.
incidental objects, 22.
irregularities in performance of *intra vires* act, cured by shareholders, 22.
legality of, 25.
main object, 24.
Memorandum of Association must specify, 21.
power of company is limited to objects specified in memorandum, 21.
unlawful, must not be, 25.

OFFICE. *See* REGISTERED OFFICE.

OFFICER OF COMPANY,
auditor is, 240.
effect of winding up by court on, 289.
public examination of, 289.
who is, 290.

OFFICIAL LIQUIDATOR. *See* LIQUIDATOR.

OFFICIAL RECEIVER,
provisional liquidator, 293.

"ONE MAN" COMPANIES, 6.

OPINION,
statements of, in prospectus, 62.

ORDINARY MEETING. *See* MEETING.

ORDINARY SHARES, 133.

OUTSIDER
dealing with company, 52.

P.

PAID-UP SHARES,
conversion of, into stock, 134.
estoppel, by certificate, 104.

PAR,
issue of shares at, 196 *n.*

PARI PASSU, 163.

PARTNERSHIP,
companies contrasted with, 5.
limited, 7 *n.* (*a*).

PAST MEMBER,
liability of, 278, 279.

PAST SERVICES,
allotment of shares for, 92.

PAYMENT,
dividends, of, 143–145.
of calls in advance, 119.
shares, for—
discount, issue at, 90.
in cash, 89.
otherwise than in cash, 91.

PERSON,
company duly incorporated is a, 5.

PERSONAL PROPERTY,
shares are, 103, 114 *n.*

PERSONAL REPRESENTATIVE
of deceased member, 96.
liability of, 96.
transfer of shares by, 114.
transmission of shares to, 114.

PETITION,
assignee of debt, by, 258.
contributory, by, 254.
creditor, by, 256.
debenture holder may, 258.
for extension of objects, 26.
reduction of capital, for, 140.

PETITION—*continued.*
standing over, 257.
to wind up company, presentation of, corresponds with bankruptcy, 287.
who may petition to wind up, 253, 258.
winding-up order, for, 253, 254.
And see WINDING-UP.

"PLACING" SHARES, 88.

POLL,
demand for, 224.
how taken, 224.

POWER,
Articles of Association, to alter, 48.
land, to hold, 79.

POWERS,
alteration of, 25.
borrowing, 145.
extension of, 25.
fairly incidental, what are, 22.
implied, 23.
incidental, main object of, 23, 24.
main object gone, 24.
memorandum, in, 21–25.
restrictions of, in case of a limited company, 8.
to sell the whole undertaking, 25.

POWERS OF DIRECTORS. *See* DIRECTORS.

POWERS OF LIQUIDATORS. *See* LIQUIDATORS.

PREFERENCE SHARES, 131.
articles of association usually regulate, 132.
capital, preference as to repayment of, 132.
cumulative, 131.
redeemable, 133.
rights of holders of, in winding up, 131, 132.

PREFERENTIAL PAYMENTS
in bankruptcy, 283.
must be paid by receiver, 191.

PRELIMINARY CONTRACT, 30, 54.

PRELIMINARY EXPENSES,
statement as to, in prospectus, 66.

PREMIUM,
issue of shares at a, 196 *n.*

PREPAYMENT
of calls, 119, 120.

PRIORITY,
costs of winding up, 263.
lien, of, 126.
of mortgage of shares, 96, 97.
over lien, 126.
secured debts, 283.
transfers, of, 111.

PRIVATE COMPANY, 242.
articles of, 245.
alteration of, 242.
definition of, 242.
exemptions of, 244, 245.
how resembles a public company, 243.
"invitation to the public," what is, 243, 244.
may become a public company, 242.
consist of two members, 244.
not issue share warrants, 246.
number of members of, 245.
position of, 243.
special provisions relating to, 244, 245.
statement in lieu of prospectus not applicable to a, 70.
transfer of shares in a, 245.
winding up of, if members less than two, 250.

PROFIT,
company formed, not for, 18.
place of, director debarred from holding, 207.
secret, liability of director for, 207.
promoter for, 60, 61.

PROFITS,
capitalisation of, 150, 151.
dividends payable only out of, 144.
meaning of term, 144 *n.* (*cc*).
paid to reserve fund, 149.
what are, 144–149.

PROMOTERS,
duty of disclosure, 60.
fiduciary position of, 60, 61.
fraud by, 62.
meaning of term, 60.
prospectus to disclose payment made to, 66.
secret profit by, 60.

PROOF OF DEBTS IN WINDING UP BY COURT, 285, 286.
after time fixed, 285.
amendment of, 285.
costs of, 285.
for interest, 286.
set off, 286.
statute barred, 285.

PROPERTY OF COMPANY,
appreciation of, 148.
depreciation of, 146, 147.

PROSPECTUS, 61, 325.
abridged, prohibited, 79.
action for misrepresentation in, 62, 63.
compensation for misstatements in, 64.
concealment in, 63.
damages for fraud contained in, 63, 64.
dated, to be, 65.
definition of, 61.
directors' liability as to, 64.
qualification, 205.
disclosure in, 62, 65.
documents deemed to be a, 69.
filing of, 65.
form of, 80-83.
fraud in, 62, 63.
"issued," meaning of, 68.
Issuing House, 69, 70.
matters required to be stated in (Companies Act, 1929, Sched. IV., Part I.), 325 *et seq.*
meaning of term, 61.
misrepresentation in, 62, 63.
must state. *See* APPENDIX A, 325.
accountants' report, 67.
auditors' report, 67.
contents of memorandum, 66.
"founders" or deferred shares, number of, 66.
goodwill, 66, 76.
interest of directors in company, 78.
material contract, date and parties, 66, 67, 76.
minimum subscription, 66, 72.
names of auditors, 67, 77.
directors, 66.
vendors, 66, 74.
net amount received by company for shares allotted, 70.
preliminary expenses, 66, 76.

PROSPECTUS—*continued.*
must state—*continued.*
purchase-money, 66, 76.
qualification of a director, 66, 72, 205.
shares paid up otherwise than in cash, 66, 74.
underwriting commission, 66, 76.
voting rights, 67, 78.
obligations of companies not issuing a, 329.
particulars to be contained in, 66.
public, containing invitation to the, 243.
published more than two years after the commencement of business, 67.
statement in lieu of, 70.
statements of opinion in, 62.
waiver clause, 78.

PROVISIONAL CONTRACTS, 74.

PROVISIONAL LIQUIDATOR, 293.

PROXY,
articles must authorise, 225.
corporation may vote by, 225.
costs of, 225.
show of hands, cannot be counted on, 223, 224.
votes by, 224, 225.
what is a, 224.

PUBLIC,
invited to subscribe, private companies, 243.

PURCHASE
of its own shares by company, 87, 125.

PURCHASE-MONEY
to be stated in prospectus, 66, 326.

Q.

QUALIFICATION OF DIRECTORS, 205, 206.
acceptance of office whether a contract to take, 84.
contract in writing to take from company, 71, 72.
shares to be taken within limited time, 72.
statement as to, in prospectus, 66, 325.
to be held "in his own right," 205.

QUALIFICATION SHARES,
director to take up, 72.

QUORUM
at meetings of company, 222.
directors, of, 204.
definition of, 204.

R.

RATIFICATION
by company of unauthorised acts of directors, 201, 202.
of contract made before incorporation of company, 55, 56.

RECEIVER,
advantage of court appointing, 187.
agent for company or the court, 189.
appointment of, by court, 187, 189.
debenture holders, 186, 188.
borrowing by, 192.
court may appoint, 187, 189.
debenture holders, for, 186, 188.
in case of mortgage of uncalled capital, 155.
jeopardy of security enables court to appoint, 190.
manager, and, 191.
preferential payments by, 191.
security given by, 191.
where there is no efficient board, 190, 191.

RECONSTRUCTION, 315.
form of dissent, 317.
rights of dissentient, 317, 318, 320.
sale of assets to foreign company, 319.
shares for purposes of, 315.
under the memorandum, 315.
undertaking for purposes of, 318.
scheme must comply with s. 264...319.
scheme of arrangement, by, 319.
voluntary winding up, dissentient members, 316.
when occurs, 315.
winding up by court to stop, 253.
within a year destroys, 317.

RECTIFICATION
of register of members, 85, 279.
if no directors, court will appoint for purposes of, 86.
evidence on, 86.
time for applying for, 279, 280.

REDEEMABLE PREFERENCE SHARES, 133.

REDUCTION OF CAPITAL, 138.
"and reduced," addition of, to company's name, 141.
cancellation of unissued shares, 142.
creditor's rights in case of, 142.
debenture-holders' objections to, 142.
evidence of loss, 142.
petition to confirm, 140.
return of paid-up capital, 141.
sanction of court, when required, 138, 142.
how far possible without, 122.

REGISTER,
of companies, 2.
of debentures, 174-179.
effect of non-registration, 177.
if chattels, need not be registered as bills of sale, 174.
right of inspection, 176.
time for, may be extended, 178.
of directors, 203.

REGISTER OF MEMBERS, 94.
copies of, right to take, 94.
entry in, generally necessary for membership, 84. 94.
inspection of, 94.
particulars, to be entered in, 94.
primâ facie evidence, 94.
rectification of, 85, 279.
registered office, to be kept at, 20.
removal from, 86.
subscribers of memorandum are members without entry in, 84.
transferee not entered in, may be a member, 107.
trusts not to be entered in, 95.

REGISTER OF MORTGAGES AND CHARGES, 174, 175.
effect of non-registration, 177.
floating charge, in case of, 175.
inspection of, 176.
what mortgage and charge must be registered, 175.

REGISTERED OFFICE OF COMPANY, 20.
change of, 20.
company must have, 20.
name of company to be exhibited at, 17, 18.
penalty for carrying on business without, 20 *n.*
register of members to be kept at, 20.
service of notices, etc., at, 20.
situation of, to be stated in memorandum, 20.

REGISTRAR OF COMPANIES, 2.
appeals from, 262.
certificate by, of incorporation of company, 58.
change of company's name sanctioned by, 19, 20.
contract as to paid-up shares to be filed with, 91.

REGISTRATION,
articles of association, of, 52.
change of name of company, of, 19, 20.
company, of new, 56.
existing, 57.
contract for issue of shares for consideration other than cash, of, 91.
effect of non, 177.
extension of time for, 178.
debentures, of, 174–179.
memorandum of association, of, 52.
mortgages and charges, of, 174, 175.
nunc pro tunc, 107.
prospectus, of, 65.
transfer of shares, of, 107.

REGULATIONS OF A COMPANY. *See* ARTICLES OF ASSOCIATION.

RE-ISSUE OF DEBENTURES, 181.

RELIEF
against forfeiture of shares, 123.

REMOVAL
of directors, 209.
liquidator appointed by court, 295, 309.

REMUNERATION
of auditors, 241.
directors, 209.

RENT
accruing after commencement of winding up, 291.
distress for, before winding up, 166.
after commencement of winding up, 291.

REORGANISATION,
capital, of, 137.

REPORT,
auditor, by, 237.
before statutory meeting, 219.

REPORT OF DIRECTORS,
before statutory meeting, 219.
particulars to be inserted in, 219, 220.
winding-up petition may be presented if statutory report not filed, 250.

REPUTED OWNERSHIP,
bankruptcy rules as to, do not apply, 288.

REQUISITION
by shareholders for meeting, 220, 221.

RESCISSION
of contract to take shares, 62.

RESERVE CAPITAL,
cannot be charged, 134, 155.

RESERVE FUNDS
remain profits, 149.

RESOLUTIONS OF GENERAL MEETING OF COMPANY,
altering memorandum of company, 25, 26.
regulations of company, 48.
declaring dividend, 143.
extraordinary, 228.
sanctioning compromise with creditors and contributories, 273.
voluntary winding up, for, 267.
notice of, to be sent to registrar, 228.
ordinary, 226.
special, 226.
articles of association, as to, 48.
change of name, as to, 19, 227.
majorities required to pass, 227.
memorandum, alteration of, 25, 26.
notice of, 227.
reducing capital, 138.
voluntary winding up, for, 266.
what are, 226.

RESTRICTIONS
on commencement of business, 74.
transfer of shares, 108.

ROTATION
of directors, 42.

RULE
in the *Royal British Bank* v. *Turquand*, 52.

S.

SALE
of company's property,
liquidator, by, 296.
new company, to, 315, 316.
shares in another company, for, 315, 316.
forfeited shares, 121.
testator's business for shares in limited company, 88.
undertaking, of, 25.

SCHEME
of arrangement, 273.

SCIENCE,
company formed for the purpose of, 18.

SEAL,
certificate of shares to be under, 103.
execution in blank of transfers under, 109.

SECRETARY,
"certification" by, 111.
duties of, 218.
is an officer of the company, 290.

SECRET PROFIT,
liability of director to refund, 207.
promoter to refund, 60, 61.

SECURED CREDITOR,
garnishee order, in respect of, 166.
landlord, 166, 291.
preferential payments in winding up to, 191, 283.
proof in winding up by, 283, 285.
rights of, 283.

SECURITY,
to be given by,
liquidator, 302.
receiver, 191.

SERVANTS OF THE COMPANY,
effect of winding up by the Court on, 288, 289.

SERVICE,
writs on company, of, 20, 21.

SET-OFF,
contributory is not entitled to, 281.
debt against debenture, of, 168.
in winding up, 286.

SHARE CERTIFICATE, 3, 103.
estoppel raised by, 104.
form of, 103.
lost, renewal of, 104.
mortgage by deposit of, 109.
primâ facie evidence of title, 103, 104.
SHAREHOLDER,
actions by, in name of company, 208.
adjustment of rights of, in winding up, 281.
allotment of shares to, 84.
articles of association, how far a contract between, 46, 47.
bankruptcy of, 115.
corporation may be, 86.
death of, 114.
dissentient, 317.
fictitious person, 88.
foreigner may be, 29.
how any one may become a, 84.
infant shareholder, 29, 87.
liability of present, 89, 279.
past, 278, 279.
list of, 97.
married woman may be, 87.
meetings of, 219.
adjournment, 225.
chairman of, 223.
notice of, 221.
ordinary and extraordinary, 220.
proxies, 224.
quorum, 222.
statutory, 219.
votes at, 223.
minimum number of, in case of registered company, 29, 244.
mortgagee may become, 87.
proceedings in name of company by, 208 *n.*
register of, 94.
rectification of, 85.
subscribers of memorandum are, 84, 85.
transferees not on register, may be, 85, 86.
votes of, 223, 224.
who are, 84, 86.
SHARES,
allotment of, 84, 99.
contract on, 101.
effect of, before minimum subscription subscribed, 100, 101.
undue delay in, 102.

SHARES—*continued.*
application for, 84, 99.
conditional, 102.
form of, 99.
bonus, 150.
brokerage for placing, 194, 195.
calls on, 117, 118.
certificate of, 3, 103.
form of, 103.
certification of transfers, 111.
conditional applications for, 102.
conversion of, into stock, 134.
deferred, 133.
discount, issue of, at a, 90, 196.
dividends on, 143.
estoppel as to title, 104.
fictitious person, in name of, 88.
forfeiture of, 121.
"founders'," 133.
infant, position regarding taking of, 87.
interest in land, are not, 103.
liability on, 89, 278.
lien on, 33, 125.
mortgage of, 109.
new company, sale for shares in, 315.
not properly paid up, applicant to pay in full, 91
ordinary, 133.
paid up otherwise than in cash, 91, 92.
par, 196 *n.*
personal estate, are, 103, 114 *n.*
"placing," 88, 195.
preference, 131, 132.
cumulative, 131.
redeemable, 133.
premium, issue of, at, 196 *n.*
purchase of, by company, 87, 125.
reconstruction, sale for purposes of, 315.
redeemable preference, 133.
stamps on transfers, 108.
subdivision of, 137.
surrender of, 124.
transfer of, 106. *See* TRANSFER OF SHARES.
transmission of, 114.
trustees purchasing, 88.
underwriting, 194.
warrants, 115.

SHARE WARRANTS, 115.
conditions on, 116.
coupons for dividends on, 116.
form of, 116.
negotiable instruments, 116.
position of holders of, 117.
stamps on, 116.

SHOW OF HANDS,
voting by, 223, 224.

SPECIAL MANAGER, 294.

SPECIAL RESOLUTION,
articles may be altered by, 48.
change of name, for, 19.
how to be passed, 227.
necessary, for what purposes, 226, 227.
voluntary winding up, for, 266.
winding up by, 250.

SPECIALTY DEBTS,
calls are, 118.
dividends are, 144.
limitation of actions for, 144.

SPECIFIC PERFORMANCE OF CONTRACT
to allot shares, 85.
give or take debentures, 183.
transfer shares, 109.

STAMP DUTY,
proxies, on, 224.
share warrants, on, 116.
transfer of shares, 108.
transfers for value, 108.
operating as voluntary dispositions, 108.

STATEMENT IN LIEU OF PROSPECTUS, 70.
does not apply to a private company, 70 *n.*
inspection of, 70.

STATUTE BARRED DEBTS,
liquidator must not pay, 285.

STATUTE OF LIMITATIONS,
calls as to, 118 *n.*
dividends, in action for, 144.
winding-up order does not run against creditors after, 295, 296.

STATUTORY COMPANY, 9.

STATUTORY MEETING,
default as to, consequences of, 250.
list of members to be produced at, 220.
report to be sent to shareholders prior to, 219.
what is the, 219.
when to be held, 219.
winding-up petition may be presented, if default is made as to, 249, 250.

STAY OF PROCEEDINGS,
presentation of winding-up petition, after, 291.

STOCK, 134, 135.
conversion of paid-up shares into, 134.
debenture stock, 157.
difference between shares and, 135.
divisibility of, 134.
members of company, stockholders are, 135.
registered, 135.
transfer of, 135.
unregistered, 135.

STOCK EXCHANGE,
rules of, 108 *n.*, 158.

SUBDIVISION
of capital, 137.
of shares, 137.

SUBSCRIBER
of Memorandum of Association, 29.
alien may be, 29.
appointment of directors by, 202.
duties of, 29.
infant may be, 29.
liability of, 84, 85.
meetings of, 202.
member of company, is a, 80, 84.
minimum number, 29.

SUBSTRATUM
of company gone, winding up because, 24, 250.

SUB-UNDERWRITING, 195, 196.

SUMMARY
of capital and shares, 97, 98.

SUMMONS FOR DIRECTIONS, 216 *n.*

SUPER TAX,
shares, liability to, 150.

SUPERVISION,
winding up under. *See* WINDING UP UNDER SUPERVISION.

SURPLUS ASSETS, 132 *n.*

SURRENDER OF SHARES, 124.
of fully paid shares, 125.
only in case where forfeiture allowed, 124.
reduction of capital by, 125.

SUSPENSION
of business for a year is a ground for a winding-up order, 250.

SYNDICATE, what is a, 246.

T.

TABLE A, 46.
adoption of, wholly or in part by registered articles, 46.
validity of provisions of, 48.

TENANT FOR LIFE AND REMAINDERMAN,
apportionment of dividends, 144 *n.*

TIME,
commencement of business, for, 74.
extension of, for registration of debentures, 178.
mortgage or charge for registering, 178.
statutory meeting, for holding, 219.

TRANSFER
bankruptcy, provisions as to transfer in case of, 109.
blank, effect of, 109.
calls, after, 120.
certificate, production of, on, 109.
"certification," 111.
directors are trustees as to, 200.
discretion of directors as to registration of, 108.
dividends declared after contract for, 151.
during winding up, 114.
duty of company to register, 107.
effect of invalid, 113.

TRANSFER—*continued.*
execution of, 107.
forged, 113.
form of, 106.
indemnity of transferor by transferee, 113, 120.
irregularity, 113.
notice of, 113.
nunc pro tunc, 107.
of debentures, 180.
shares, 106.
pauper, to a, 108.
personal representatives, by, 114.
power to refuse registration of, 108.
priority, 111.
registration of, 107.
restrictions on, 108.
right of shareholders to, 108.
shares, specific performance of a contract to, 109.
stamp on, 108.
share warrants on, 116.
stock, of, 135.
winding up, made during, 114.

TRANSFEREE,
liability of, 113.
objection by directors to, 108.
rights of, 107, 113.
registration of, 107.

TRANSFEROR,
dividends, right to, 151.
liability of, 113, 120.

TRANSMISSION OF SHARES,
on appointment of new trustees, 115.
bankruptcy, 115.
death, 114.
marriage, 115.

TRUST DEED, 162, 170.
debentures, in, 170.
advantages of, 170.
form of, 171.

TRUSTEE,
appointment of new, shares transferred, 115.
beneficiary must indemnify, 95.
company, for, contract by, 54, 55.
director, how far, 199, 200.

TRUSTEE—*continued.*
debenture-holders, for, 170.
lien, enforceable against, 127.
purchasing shares, 88.
shares of, 95.
sale of trust property, for shares, 88.

TRUST,
power to declare forfeiture, is a, 122.

TRUSTS,
company not affected by notice of, 95.
notice of, not to be entered on register, 95.
provision in articles as to, 34.

U.

ULTRA VIRES,
acts of company, 21.
directors, 22, 201.
articles cannot sanction acts that are, 48.
borrowing, 153.
consent of all members cannot ratify, 21.
payment of dividends out of capital is, 144.
regulations similar to Table A cannot be, 48.

UNAUTHORISED ACT,
director may bind company by, how far, 53 *n.*

UNCALLED CAPITAL.
mortgage or charge of, 154.

UNDERTAKING,
sale of, 25.

UNDERWRITING, 194.
agreement, form of, 197.
brokerage, how far differs from, 194.
commission for, 195.
to be stated in prospectus, 66.
conditions of, 195.
disclosure of, 195.
legality of, 195.
option to take shares, 196.
sub-underwriting, 195, 196.

UNINCORPORATED COMPANIES, 7.
winding up of, 260.

UNITED KINGDOM,
companies registered out of, 79.

UNLIMITED COMPANY, 10.

UNSECURED CREDITORS,
rights as against debenture-holders, 179
rights of, in winding up, 284.

V.

VALIDITY OF ACTS,
of *de facto* directors, 208.
disqualified directors, 208.

VALUATION,
of securities in winding up, 283.

VENDOR
lien of, priority, 128.
to be named in prospectus, 66, 74.
to company, 74.
who is a, 75.

VESTING ORDER,
Crown, by, 264.

VOLUNTARY DISPOSITIONS,
transfers operating as, stamps on, 108

VOLUNTARY WINDING UP,
adoption of proceedings by court, 273.
alteration in status of members, after, 268
applications to court, 272.
appointment of liquidators, 269.
arrangement with creditors, 273.
powers of the court regarding, 273, 274.
commencement of, 267.
committee of inspection, 270.
conclusion of, 270.
costs of, 272.
creditors, 269.
arrangements with, 273.
liquidator appointed, 270.
meetings, 269, 270.
procedure, 270.
rights, 272.

VOLUNTARY WINDING UP—*continued.*
date of, 267.
directors' powers in, 269, 270.
dissolution of company, 270.
distribution of property, 271.
effect of, on shares, 267.
extraordinary resolution, by, 267.
final meeting, 269, 272.
grounds for, 266.
kinds of, 268.
liquidator, duties of, 269, 270, 271.
power of, 269, 270.
power to make calls, 280.
members, by, 268.
procedure, 269.
power of company during, 268.
proceedings on, 268.
against the company, 292.
proof of debts, 284, 285.
property of company, how applied, 271.
resolution for, 266.
servants, employees, etc., of company, how affected by a, 288.
special resolution for, 266.
stay of actions against company, 292.
transfer of shares during, 267.
when company can be wound up voluntarily, 266.
winding-up order after, 272.

VOTES,
at meetings, 223.
by proxy, 224.
declaration of chairman as to, 227.
director interested in, 213.
members, of, 223.
poll, 224.
registered holders of shares only may exercise, 223.
right to, to be stated in prospectus, 67, 78.
share warrants, holders of, 117.
show of hands, 224.
stockholders', 135.

VOTING RIGHTS,
disclosure of, 67, 78.

W.

WAIVER CLAUSE
in prospectus, 78.

WILFUL DEFAULT,
directors liable for, 240.

WINDING UP,
consequences of, 278 *et seq.*
how begun, 253.

WINDING UP BY ORDER OF THE COURT, 249.
adjustment of rights of contributories, 281.
advertisement, 262.
affidavit on, 261.
after voluntary winding up, 272.
appeal against winding-up order, 263.
from order of registrar, 262.
appointment of,
liquidator, 293.
official receiver, 293.
provisional liquidator, 293.
special manager, 294.
arrangements with creditors, 273.
assets, no winding up unless there are, 255.
assignee of a debt may petition, 258.
bankrupt, company cannot be made, 249.
bankruptcy rules apply, 282, 283.
books of company, 307.
calls cannot be set off, 281.
enforcement of, 282.
liquidator's powers to make, 280.
commencement of, 261.
committee of inspection, 293.
companies wound up, what can be, 260.
company unable to pay debts, 251.
conclusion of, 263.
contingent creditor, 259.
contributories, petition by, 253, 254.
wishes regarded, 254.
costs, 263.
county court jurisdiction, 261.
creditors, claims unliquidated, cannot petition, 259.
petition, 256.
need not prove assets, 256, 257.
wishes of, 254.

WINDING UP BY ORDER OF THE COURT—*continued.*
date of, 261.
debenture-holders can petition, 258.
debts provable in, 285.
when company deemed unable to pay, 251.
directors, powers of, 289.
dismissal of servants, 288.
dispositions of property after, 290.
disputed debt, 257.
dissolution of company, 263.
effect on property, 263.
effect on creditors, 282, 283.
of, on officers of the company, 289.
servants of the company, 288.
foreign company, 260.
for fraud, 252, 253.
fraudulent preference, 287.
grounds for, 249, 250.
High Court, petition to the, 261.
illegal society, 260.
"just and equitable," 252.
liquidator. *See* LIQUIDATOR.
main object gone, 24, 250.
meetings, 297, 304.
members less than seven, 250, 251.
petition by contributory, 254.
creditor, 256.
petition, winding up commenced by, 253, 260.
preferential payments in, 283, 284.
proceedings against company, effect of, on, 291.
procedure on, 260.
proof of debts, 285, 286.
after time fixed, 285.
amendment of, 285.
costs of, 285.
interest on, 286.
proof of fraud, 252, 253.
provisional liquidator, 293.
public examination, 289.
reconstruction, to stop, 253.
reputed ownership, 288.
rights of contributories, 278.
secured creditors, 283.
servants, etc., of company, how affected by, 288.
set off, 281, 286.
stand over, order to, 257.
staying proceedings against company after order, 291.

WINDING UP BY ORDER OF THE COURT—*continued.*
substratum gone, 24.
transfer of shares during, 114.
unable to pay debts, when, 251.
unincorporated companies, 260.
when company is subject to a, 249, 250.
wishes of creditors and contributories, 254.

WINDING-UP PETITION, 253.
by contributory, 254.
by creditor, 256.
by debenture-holder, 258.
malicious presentation of, 260.
who may present, 253, 254, 258.

WINDING UP RULES, 1909,
powers of liquidators under, 297.

WINDING UP UNDER SUPERVISION OF COURT, 275-277.
advantages of, 277.
dissolution, 277.
liquidators in, 314.

WINDING UP, VOLUNTARY. *See* VOLUNTARY WINDING UP.

WISHES
of creditors and contributories, 254.

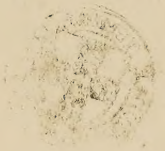
WORKMEN,
preferential payment of wages, etc., in winding up, 283, 284.

Y.

YEAR,
business of company to be commenced within, 250.
meeting to be held every, 220.

PRINTED IN GREAT BRITAIN BY WILLIAM CLOWES AND SONS, LIMITED, LONDON AND BECCLES.

193
2.



45

29 JULY 1990